

CANCEL CULTURE: AN EXAMINATION OF CANCEL CULTURE ACTS AS A FORM OF  
COUNTERSPEECH TO REGULATE HATE SPEECH ONLINE.

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## **ABSTRACT**

Morgan English: Cancel Culture: An Examination of Cancel Culture Acts as a Form of  
Counterspeech to Regulate Hate Speech Online.  
Under the direction of (Tori Ekstrand)

The purpose of this paper is to introduce the use of cancel culture as a form of counterspeech that regulates hate speech online. Opponents of cancel culture argue that it deters people from speaking by suppressing their speech, and it makes it harder for people to participate in the free speech environment. But cancel culture may be the preferred form of counterspeech that opponents of cancel culture complain about to redress hate speech. The purpose of this thesis is to examine how cancel culture is a form of counterspeech that can effectively condemn people for their speech and serve the marketplace of ideas. Cancel culture has been studied as a communications and discourse phenomenon, but less has been said about its role as an effective strategy within the First Amendment's counterspeech doctrine on online platforms. This paper will attempt to fill that gap.

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# CHAPTER ONE

## INTRODUCTION

In early 2016, Joanne Prada, also known as Internet personality “Joanne the Scammer,” posted a video entitled “Caucasian Living” to various social media platforms such as YouTube, Vimeo, and Twitter.<sup>1</sup> The video features Joanne, a Black and Hispanic queer man, in drag, exaggerating the white female stereotypes seen in television shows such as the *Kardashians* or the *Real Housewives* franchise.<sup>2</sup> As she walks around giving a tour of the expensive home to the cameras (channeling the 2000s *MTV Cribs* style show), she drops pricey brand names, which she mispronounces for humorous effect.<sup>3</sup> Thirty-nine seconds into the video, she is fumbling with an elaborate espresso machine, trying, but failing to operate it.<sup>4</sup> “That’s over. It’s canceled,” she says to the camera, and moves to another part of the kitchen.<sup>5</sup> “We don’t need coffee when we

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<sup>1</sup> Tatered (@tatered), Twitter, (Aug 17, 2016), <https://twitter.com/tatered/status/765982297283710977?s=21>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*



have sparkling water.”<sup>6</sup> For that scene, that phrase, Joanne the Scammer gets credit for one of the earliest uses of “cancel culture.”<sup>7</sup>

Following the video’s publication, the phrase and image, “That’s over. It’s canceled,” became a meme throughout Black Twitter and Queer Twitter.<sup>8</sup> The phrase was mainly used to react humorously to frustrations or small annoyances in users’ lives. Bad haircuts,<sup>9</sup> ruined Snapchat streaks,<sup>10</sup> and boys we had crushes on in high school were all “over, canceled.”<sup>11</sup> Then, starting in 2014 and 2015, there were conversations in the news and on Twitter about what to do about Bill Cosby, the longtime comedian and actor, who at the time was charged with

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<sup>6</sup> *Id.*

<sup>7</sup> Michael Barbaro. *Cancel Culture: Part 1: Where it came from*, The Daily, (Aug. 10, 2020). <https://www.nytimes.com/2020/08/10/podcasts/the-daily/cancel-culture.html>.

<sup>8</sup> Rachel E. Greenspan. *How ‘cancel culture’ quickly became one of the buzziest and most controversial ideas on the internet*. Insider. (Aug. 6, 2020). [https://www.insider.com/cancel-culture-meaning-history-origin-phrase-used-negatively-2020-7#:~:text=The%20phrase%20%22cancel%20culture%22%20experienced,by%20Merriam%2DWebster%20and%20Vox.&text=Responding%20to%20the%20backlash%20against,%22Let's%20talk%20'cancel%20culture](https://www.insider.com/cancel-culture-meaning-history-origin-phrase-used-negatively-2020-7#:~:text=The%20phrase%20%22cancel%20culture%22%20experienced,by%20Merriam%2DWebster%20and%20Vox.&text=Responding%20to%20the%20backlash%20against,%22Let's%20talk%20'cancel%20culture.). (The phrase “cancel culture” experienced notable growth in 2016 and 2017, particularly on Black Twitter). According to Dr. Mia Moody Ramirez, who co-wrote *From Blackface to Black Twitter: Reflections on Black Humor, Race, Politics, & Gender* with Dr. Janette L. Dates, Black Twitter “is not a separate entity from Twitter. Black Twitter is a grassroots movement within Twitter that has provided a virtual community of mostly African-American Twitter users a collective voice on a variety of issues, including Black Lives Matter.” Gabrielle White. *What Is Black Twitter and How Is it Changing the National Conversation? Baylor Expert Explains*. Baylor University – Media and Public Relations. (Feb. 19 2019). <https://www.baylor.edu/mediacommunications/news.php?action=story&story=207153>. Like Black Twitter, Queer or Gay Twitter is just a term to describe people from the LGCTQIA+ community tweeting about LGBTQIA+ matters. See generally, Kevin Symes. *Gay Twitter Explained, Finally!* Instinct Magazine. (Nov. 15 2018) <https://instinctmagazine.com/gay-twitter-explained-finally/> (stating that Gay Twitter is not a real place but a subculture conceptualized online.).

<sup>9</sup> natalia OWNER OF TELEPATHY (@jeoncherry), Twitter, (Jan. 29, 2018) <https://twitter.com/jeonscherry/status/957982023121080321?s=21>.

<sup>10</sup> Phoebe Eve (@pheobekolstar), Twitter, (Oct. 19. 2016). <https://twitter.com/PhoebeKolesar/status/792402900710518784>.

<sup>11</sup> jamie (@jaimieshelves), Twitter, (Jun. 20, 2018) <https://twitter.com/jamishelves/status/1009424827696889861?s=21>.

allegations of sexual assault and rape by over sixty women.<sup>12</sup> The term “cancel” was used specifically in reference to his comedy shows and the cancelation of his hit 90s television show, *The Cosby Show*.<sup>13</sup> By 2016-2017, Black users had started to use the term to “cancel” the person Bill Cosby, and there were fewer references to his work.<sup>14</sup>

It is not surprising that the person credited with creating cancel or call-out culture identifies as queer, Black, and Hispanic. He also was once an online sex worker, but now is famous for using his platform to create viral videos dressed in drag to comment on race and perceptions of white wealthy cisgender women.<sup>15</sup> Cancel culture is often used by historically marginalized groups to seek redress from speakers on social media platform.<sup>16</sup> At times, groups

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<sup>12</sup> Lindsay Paul. *Two more women describe horrific experiences with Bill Cosby, As his lawyer releases statement on ridiculous claims*. Globalgrind. (Nox 22. 2014) [https://globalgrind.com/4035742/bill-cosby-sexual-assault-drug-women-lawyer-releases-statement-details/?utm\\_source=Twitter](https://globalgrind.com/4035742/bill-cosby-sexual-assault-drug-women-lawyer-releases-statement-details/?utm_source=Twitter) (mentioning that the Broadway Center in Washington was going to cancel his comedy show due to allegations of sexual assault). See also Aja Romaro. *Why we can't stop fighting about cancel culture*. Vox. (Aug. 25, 2020). <https://www.vox.com/culture/2019/12/30/20879720/what-is-cancel-culture-explained-history-debate> (claiming that the earliest version of this online form of canceling was found in 2010 on the blogging platform Tumblr).

<sup>13</sup> In 2014, NBC and Netflix canceled Bill Cosby's shows after claims he sexually assaulted women. See generally Piya Sinha-Roy. *NBC, Netflix cancel Bill Cosby's shows after sex assault claims*. Reuters. (Nov. 18 2014). <https://www.reuters.com/article/us-people-billcosby/nbc-netflix-cancel-bill-cosbys-shows-after-sex-assault-claims-idUSKCN0J30CO20141119>.

<sup>14</sup> Maggie Gins. (@maggins1), Twitter, (May 2, 2015). <https://twitter.com/maggins1/status/594649986723237889?s=21>; see also Garrett Karsorek. (@garettkarsorek1), Twitter, (Dec. 25, 2016) <https://twitter.com/garettkarsorek1/status/813097536475037696?s=2>; see also (@firefire100), Twitter, (Sept. 1, 2018) <https://twitter.com/firefire100/status/1036023964462723072?s=21> (debating the differences between canceling the person Bill Cosby and canceling the hit show Bill Cosby was on).

<sup>15</sup> Patrick D. McDermott. *Rise and Scam*. The Fader. (Aug. 8, 2016). <https://www.thefader.com/2016/08/09/joanne-the-scammer-branden-miller-messy-bitch-interview>.

<sup>16</sup> Lisa Nakamura. *The Unwanted Labour Of Social Media: Women Of Colour Call Out Culture As Venture Community Management*. *New Formations*, (86), 108-9. (2015). doi:<http://dx.doi.org.libproxy.lib.unc.edu/10.3898/NEWF.86.06.2015> (using responses to “gamer gate” as example of minorities combating sexism and racism online). Black Lives Matter activists have also used public shaming when calling out the authors of racist textbooks, fatal cases of police violence in communities of color, racial stereotypes used to sell consumer products, and university departments lacking diversity. Pippa Norris, *Closed Minds? Is a 'Cancel Culture' Stifling Academic Freedom and Intellectual Debate in Political Science?* (August 3, 2020). HKS Working Paper No. RWP20-025, 2 <http://dx.doi.org/10.2139/ssrn.3671026>.

that engage in cancel culture are seeking redress for hate speech. The term “hate speech” can mean many different things, but it “is generally agreed to mean abusive language specifically attacking a person or persons because of their race, color, religion, ethnic group, gender, or sexual orientation.”<sup>17</sup> Lisa Nakamura, who is often cited as the first scholar to write about cancel culture, which she and others term “call out culture” instead, also describes cancel culture as the activities by “[w]omen of colour and sexual minorities who post, tweet, re-post, and comment in public and semi-public social media spaces in order to respond to and remediate racism and misogyny online.”<sup>18</sup>

The process of being canceled occurs on social media platforms such as Twitter, Tik Tok, Facebook, and Instagram. It can involve public challenging or public shaming of others to “cancel” the celebrity, organization, or private person. Canceling is a metaphor that means efforts to stop following the canceled person or organization’s social media page; to refuse participation in activities that generate wealth for the person or organization such as streaming their music or buying their products; or to challenge the person’s ideas by commenting directly on the page or in a separate post. It almost always involves a collective effort by offended peers.<sup>19</sup> Although some of the first individuals to be canceled online were celebrities in the

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<sup>17</sup> Chris Demaske. *Hate Speech*. The First Amendment Encyclopedia. (June 2017). <https://www.mtsu.edu/first-amendment/article/967/hate-speech>. For example, when Jimmy Fallon’s 2000 sketch of him doing blackface while impersonating Chris Rock was reshared in 2020 and went viral, many Twitter users canceled the celebrity by using the #jimmyfallonisovertime hashtag. Karen Simao. *10 Biggest Celebrity ‘Cancellations’ of 2020 (So Far)*. TheThings. (Sep. 8 2020). <https://www.thethings.com/cancelled-celebrities-2020/>.

<sup>18</sup> Lisa Nakamura. *The Unwanted Labour Of Social Media: Women Of Colour Call Out Culture As Venture Community Management*. *New Formations*, (86), 107. (2015). doi:<http://dx.doi.org.libproxy.lib.unc.edu/10.3898/NEWF.86.06.2015>.

<sup>19</sup> For example, on Twitter users are fond of using the “#isoverparty” hashtag to cancel celebrities as a group and identify their target. See Palmer Haasch. *How #isoverparty became the default hashtag format for Twitter cancelations, from celebrities like Doja Cat to companies like Wendy’s*. Insider. (Jun. 2 2020). <https://www.insider.com/isoverparty-hashtag-wednys-cancel-culture-twitter-doja-cat-dojacatisoverparty-2020-6>.

entertainment industry, cancel culture has been documented to affect people regardless of race, class, political ideology, age, notoriety, and even personhood (Aunt Jemima was “canceled” by some who considered her a stereotypical mascot).<sup>20</sup> It seems to not matter who is speaking as much as whether the speech reaches an audience that is offended and can respond.

Some have argued that cancel culture is harmful to the speech environment. JK Rowling, along with other authors, writers, and university professors signed their names to a letter challenging cancel culture, published in Harper’s Magazine.<sup>21</sup> In that letter, they argued that

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<sup>20</sup> Some of the first people to be “canceled” were celebrities and men in high level positions in the entertainment industry. This is because cancel culture converged with the #MeToo movement as women began to come forward about sexual assault and harassment in the workplace. See Thomas Urbain. *Cancel Culture: Positive social change or online harassment?* The Jakarta Post. (July 23, 2020). <https://www.thejakartapost.com/life/2020/07/23/cancel-culture-positive-social-change-or-online-harassment.html>. (“Cancel culture roared into the mainstream as part of the #MeToo movement in 2017, when many Hollywood A-listers were toppled by a wave of fury over accusations of sexual harassment and abuse with impunity.”) Some notable celebrities were Bill Cosby, R. Kelly, and Harvey Weinstein. All of these entertainers eventually faced criminal charges brought as more women came forward. See *Is it time to cancel ‘cancel culture’? We have some thoughts*. (Jul. 30, 2020). <https://www.lifestyleasia.com/ind/culture/us-versus-them-is-it-time-to-cancel-the-cancel-culture/>. (citing J. K. Rowling, Lana Del Rey, law professor Richard Ford, and the Brand Aunt Jemima as being recipient of backlash for their speech). When make-up artist Jeffree Star was accused by former friend Laura Lee on YouTube of liberally using the n-word in private there were requests made by some users to unsubscribe from Star’s YouTube page. See Bethany Wade. *All the reasons why Twitter should just cancel Jeffree Star permanently*. Film Daily. (June 19 2020). <https://filmdaily.co/news/cancel-jeffree-star/>; see also Kay q (@quartey\_kevin). Twitter. (Jun. 20). [https://twitter.com/quartey\\_kevin/status/1274413668239802368](https://twitter.com/quartey_kevin/status/1274413668239802368). See also Amyleigh Hoffine (@amyleigh\_ruth). Twitter. (Jun 25) [https://twitter.com/amyleigh\\_ruth/status/1276300354829684739](https://twitter.com/amyleigh_ruth/status/1276300354829684739). (comparing how people canceled Jenna Marbles to how people did not cancel Jeffree Star). Moreover, there were debates on Twitter over how to cancel Kanye West after a widely criticized interview in which he suggested that slavery was a choice and for publicly supporting Donald Trump. Harmeet Kaur. *Kanye West just said 400 years of slavery was a choice*. CNN. (May 4 2018). <https://www.cnn.com/2018/05/01/entertainment/kanye-west-slavery-choice-trnd/index.html>. Some argued that West should be canceled as an individual; others thought he should be canceled as an artist and people should stop buying or streaming his music. See The Notorious PrettyLord (@mabiQo). Twitter. (Nov 20. 2018). <https://twitter.com/mabiQo/status/1064798156892835840> (“i tried to cancel kanye west then his old music snuck up on me.”); Eat The Rich (@groovyliljess). Twitter. (Jun 29 2018). <https://twitter.com/groovyliljess/status/1012832010753093632> (“Might cancel my Apple Music simply because Kanye West just came on my Strokes radio”); (@Vx13th). Twitter (Sep. 27 2018) <https://twitter.com/Vx13th/status/1045385727696097280> (“I will never “cancel” Kanye West the artist. Kanye the artist is completely different from Kanye the person. Call me sleep, call me brainwashed, Idc. The music is all i care about. What he does with his life is not my interest anymore.”).

<sup>21</sup> *A letter on justice and open debate*. Harper’s Magazine. (Jul. 7, 2020). <https://harpers.org/a-letter-on-justice-and-open-debate/>.

cancel culture has no place in open debate, and that they “need a culture that leaves us room for experimentation, risk taking, and even mistakes.”<sup>22</sup> In the letter, the authors wrote that “we uphold the value of robust and even caustic counter-speech” but they compared cancel culture to a due process violation by describing it as “swift and severe retribution in response to perceived transgressions of speech and thought.”<sup>23</sup> Similarly, in First Amendment law, the counterspeech doctrine posits that the proper response to negative speech is to counter it with positive expression rather than suppressing speech.<sup>24</sup>

Opponents of cancel culture argue that the practice deters people from speaking by suppressing their speech, and it makes it harder for people to participate in the free speech environment.<sup>25</sup> But cancel culture may be the preferred form of counterspeech to redress hate

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* Ironically, some signatories of the letter were later canceled on social media when the letter went public. One user response to the letter in a Tweet was that “The Harper’s open letter sure looks to be written from a position of power and privilege using abstraction and passive voice to muddy the discourse.” Jeremy Friesen. (@jeremyfriesen). Twitter. (Jul 10 2020). <https://twitter.com/jeremyfriesen/status/1281629326866370563>. For example, author John Warner responded to the hyperlinked letter on Twitter by stating that the letter was “an attempt to define and police the boundaries of discourse written and championed by those who have the most prominent voices within those current boundaries. I’m sure their stance is sincerely held, but we cannot overlook this subtext.” John Warner. (@biblioracle). Twitter. (Jul. 7 2020). <https://twitter.com/biblioracle/status/1280495721142194185>.

<sup>24</sup> By positive expression the authors of the Harper’s Letter and others likely mean “uninhibited, robust, and wide-open” debate on matters of public concern. Cancel culture, like political correctness, seems to be outside of that definition. See Terri R. Day & Danielle Weatherby, *Speech Narcissism*, 70 FLA. L. REV. 839, (Jul 2018) (arguing that political correctness and safe spaces on college campuses “is the antithesis of the free speech principles thought essential to secure liberty and democracy.”).

<sup>25</sup> Princeton History professor Sean Wilentz, who signed the Harper’s letter stated that examples of cancel culture, such as the resignation of New York Times Opinion Editor James Bennet, following a public outcry over publication of an op-ed by Senator Tom Cotton titled “Send In the Troops” was “a mistake” in an interview with The Daily Princeton, but he argued, “Even if you make a mistake, you move on.” Marie-Rose Sheinerman. *U. professors, alumni sign controversial Harper’s letter on ‘justice and open debate’*. The Daily Princeton. (Jul. 9 2020). <https://www.dailyprincetonian.com/article/2020/07/harper-letter-princeton-affiliates-signed>.

speech.<sup>26</sup> Critical Race Theory (CRT) takes the position that protecting racist speech further preserves the interests of those in powerful positions.<sup>27</sup> Lisa Nakamura would call this “critical counterspeech” one that ultimately benefits the users as well as the owners of the platform by regulating hate speech on the platform.<sup>28</sup> The purpose of this thesis is to examine how cancel culture is a form of counterspeech that can effectively condemn people for their speech and also serve the marketplace of ideas.<sup>29</sup>

Cancel culture has been studied as a communications and discourse phenomenon, but less has been said about its role as an effective strategy within the First Amendment’s counterspeech doctrine.<sup>30</sup> This thesis will attempt to fill that gap. The study of cancel culture as an aspect of the counterspeech doctrine is an interdisciplinary exercise, requiring study of the role of hate speech and discourse online as well as a study of the law and the First Amendment’s commitment to the

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<sup>26</sup>In the example that Dr. Sean Wilentz cited he did not mention in his interview the group of prominent Black Times staffers, including author of the 1619 Project Nikole Hannah-Jones, who staged a virtual “walk-out,” tweeting that the op-ed “put Black people, including Times staff, in danger.” *Id.*

<sup>27</sup> The piece called for the national guard to step in the quell protests about police brutality against primarily Black men and women. Senator Tom Cotton. *Send In the Troops*. New York Times. (June 3 2020). <https://www.nytimes.com/2020/06/03/opinion/tom-cotton-protests-military.html>.

<sup>28</sup> Nakamura, *supra* note 16, at 112.

<sup>29</sup> Opponents of cancel culture may argue that the resignation of the Time editor was a form of censorship that does not belong in the marketplace of ideas. Some proponents of cancel culture may believe that the resignation was an appropriate response to a piece that contains harmful speech.

<sup>30</sup> See generally Gwen Bouvier, *Racist call-outs and cancel culture on Twitter: The limitations of the platform’s ability to define issues of social justice*, 38 *Discourse, Context & Media* 178 (2019) (studying a racist call-out in Canada, which trended on Twitter in many countries leading to its coverage in mainstream media outlets) <https://doi.org/10.1016/j.dcm.2020.100431> ; Eve Ng, *No Grand Pronouncements Here...: Reflections on Cancel Culture and Digital Media Participation*, 21:6 *Television and New Media* 621, (2020) (discussing how digital practices such as cancel culture often follow a trajectory of being initially embraced as empowering to being denounced as emblematic of digital ills). <https://doi.org/10.1177%2F1527476420918828>; Meredith D. Clark, *DRAG THEM: A brief etymology of so-called “cancel culture”*, 5:3-4 *Communication and the Public* 88, (2020) <https://doi.org/10.1177/2057047320961562> (tracing the practice of the social media callout from its roots in Black vernacular tradition to its misappropriation in the digital age by social elites, arguing that the application of useful anger by minoritized people and groups has been effectively harnessed in social media spaces as a strategy for networked framing of extant social problems).

marketplace of ideas metaphor. Chapter one of this thesis will (1) explain how hate speech is harmful online, (2) define and give a brief history of counterspeech and how boycott speech relates to cancel culture, and (3) demonstrate how cancel culture uses public shaming to regulate speech and norms on the internet as a type of counterspeech. Chapter two will (1) explain how Critical Race Theory will be used as a theoretical perspective to inform the interdisciplinary research this thesis will address and (2) present the research questions and method to answer those research questions. Chapters three, four, and five will summarize and present the findings on cancel culture from three case studies. Chapter six will answer research question one. Chapter seven will present the findings for research question two and will answer question two. Chapter eight is the conclusion.

## **LITERATURE REVIEW**

### ***Hate speech online***

This section will define “hate speech” and then will address how hate speech is regulated on online platforms like Twitter. The term “hate speech” is generally agreed to mean abusive language specifically attacking a person or persons because of their race, color, religion, ethnic group, gender, or sexual orientation.<sup>31</sup> There is often a power imbalance that occurs with hate speech that is not present with other forms of speech. Racist speech, for example, generally targets the powerless as opposed to the powerful, aims to intimidate and harass as opposed to

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<sup>31</sup> Lauren E. Beausoleil, *Free, Hateful, And Posted: Rethinking First Amendment Protection Of Hate Speech In A Social Media World*, 60 B.C. L. Rev. 2101, 06 (2019) (citing *Matal v Tam*, 137 S. Ct. 1744, 1764 (recognizing that “speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful,” but remains constitutionally protected)).

protest, and promotes governmental illegitimacy as opposed to social justice.<sup>32</sup> Moreover, hate speech does not occur in isolation; it picks its target individuals who have been exposed to racist hate speech before and are likely to experience its sting again in the future.<sup>33</sup>

Hate speech, as a general category, is protected by the First Amendment.<sup>34</sup> The U.S. Supreme Court has repeatedly embraced the protection of hate speech, relying on Justice Oliver Wendell Holmes' assessment that "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought – not thought for those who agree with us but freedom for the thought we hate."<sup>35</sup> Speech itself, whether racist epithets or burning crosses, is not enough to prove a criminal or civil tort, so this form of speech cannot be punished through legal remedies.<sup>36</sup> Hateful speech can be considered when acts are committed as an enhancement to the crime committed, but the speech is not a crime by itself.<sup>37</sup>

Most speech online is regulated primarily by other forces entirely simply because the internet is not a public forum.<sup>38</sup> Speech online happens in mostly private settings, meaning that

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<sup>32</sup> Steven Shiffrin, *Dissent, Injustice and the Meanings of America*. PRINCETON U. PRESS. 77-78. (2000).

<sup>33</sup> Richard Delgado, *Toward a legal realist view of the first amendment*, 113(4), HARV. L. REV., 778, 787. (2000) <http://libproxy.lib.unc.edu/login?url=https://www-proquest-com.libproxy.lib.unc.edu/docview/61267915?accountid=14244>.

<sup>34</sup> See generally *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).

<sup>35</sup> *U.S. v. Schwimmer*, 279 U.S. 644, x (1929). See also *Snyder v Phelps*, 562 U.S. 443, 58 (2011) (The court has stated that they would like to prevent the suppression of "vehement, caustic, and sometimes unpleasan[t] expression" by juries that are "unlikely to be neutral with respect to the content of the speech").

<sup>36</sup> *R.A.V. v. City of St. Paul*, *supra* note 34.

<sup>37</sup> *Id.*

<sup>38</sup> The First Amendment protects from government action and the internet is not a public place and social media and platforms are private actors. See generally *Praeger University v. Google*, D.C. No. 5:17-cv-06064- LHK (2020). For example, even though YouTube hosted content from billions of users because a private company is not ruled public from just the fact that they are using their private property as a public forum. *Id.*



the government cannot directly regulate speech in that forum. Social media sites may regulate the content on their sites through their terms of service. Twitter does not have a hate speech policy, but rather calls it a hate conduct policy.<sup>39</sup> Twitter defines hateful conduct as conduct where people “promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.”<sup>40</sup> Twitter states that it examines the “context” of the post before deciding whether to flag it or remove it from view.<sup>41</sup> When determining whether to take enforcement action, Twitter states that it “may consider a number of factors, including (but not limited to) whether: (1) the behavior is directed at an individual, group, or protected category of people; (2) the report has been filed by the target of the abuse or a bystander; (3) the user has a history of violating our policies; (4) the severity of the violation; and (5) the content may be a topic of legitimate public interest.”<sup>42</sup>

Social media sites have varied responses to removing racist rhetoric online, but removing posts or quick action is likely not the typical response.<sup>43</sup> Social media sites may have a way to report hateful rhetoric online, but suppressing speech is rare.<sup>44</sup> This means that hateful tweets and

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<sup>39</sup> Twitter Help Center – General Guidelines and Principles, *Our approach to policy development and enforcement philosophy*, Twitter, <https://help.twitter.com/en/rules-and-policies/enforcement-philosophy>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See generally, Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598. (Apr. 10 2018). <https://harvardlawreview.org/2018/04/the-new-governors-the-people-rules-and-processes-governing-online-speech/>.

<sup>44</sup> Johnny Holschuh, *#civilrightscybertorts: Utilizing Torts to Combat Hate Speech in Online Social Media*, 82 U. CIN. L. REV. 953, 957-958 (2018) <https://scholarship.law.uc.edu/uclr/vol82/iss3/8>.

posts stay up and affect audiences long after they are initially posted.<sup>45</sup> The harmful effects can exacerbate the harm if they are retweeted or if they make their way to other platforms.<sup>46</sup> And on the internet that audience can be global. For example, two high school students posted a Tik Tok to their followers which contains references to racial stereotypes and epithets; the video went viral when it was posted on Twitter.<sup>47</sup> The teens were later “canceled” by being expelled from their school after online strangers contacted the school and showed administrators what they posted.<sup>48</sup> Not only does hate speech often harm the targeted group but it may also normalize the behavior to other members of the audience.<sup>49</sup> Hate speech is present online in many forms, but there is a growing movement and set of norms against hate speech online.<sup>50</sup> Cancel culture is a part of that growing norm. It has been a driving force behind the consequences like those faced by the teens.

The relationship between hate speech and cancel culture should be studied because it may be the driving force that is regulating hate speech online. Platforms attempt to play neutral parties in the speech marketplace, so minorities are often the ones challenging and responding to hateful speech.<sup>51</sup> Reddit is a platform that has had some history with users posting hateful

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<sup>45</sup> *Id.*

<sup>46</sup> Richard Delgado, *supra* note 32 at 787.

<sup>47</sup> In the post, two high school seniors could be seen acting as a makeshift human generator, adding derogatory slurs and stereotyped black traits to their "formula." Isaiah Magsino. *Teens won't stop posting racist videos and challenges on Tik Tok. Experts explain why the problem continues*, Insider, (May 11, 2020) <https://www.insider.com/tiktok-continues-to-have-problems-with-racist-videos-2020-5>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Richard Delgado & Jean Stefancic. *Hate Speech in Cyberspace*, 49 WAKE FOREST L. REV. 319 (2014).

<sup>51</sup> Lisa Nakamura, *supra* note 16 at 107.

content in the past.<sup>52</sup> The Southern Law Poverty Center noted in 2015 that the site hosted racist content and pointed out that in 2013 “a hyper-racist subreddit called “GreatApes” was formed.”<sup>53</sup> In 2018, when The Verge asked Reddit CEO Steve Huffman if “obvious open racism” was against the site’s rules, he said “no.” It was not until June 2020, after the death of George Floyd<sup>54</sup> and nationwide protests against police violence, that more than 800 moderators on Reddit signed an open letter demanding the company add a policy regarding hate speech. The company decided to expand a policy on hate speech in September 2020.<sup>55</sup>

Before the expansion, the Southern Law Policy Center found that the posts were informally regulated by a working document that dictates community guidelines, called “Reddiquette.”<sup>56</sup> “This idea of user-policed communities that contain high-quality, diverse content is part of the ethos Reddit has worked hard to project.”<sup>57</sup> Within a year of the GreatApes Reddit, a “Chimpire” network had grown on the site. Forty-six active subreddits grew on racist topics, including “Teenapers,” “ApeWrangling,” “Detoilet,” and “Chicongo,” along with subreddits for both “TrayvonMartin” and “ferguson,” each of them dealing with the controversial

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<sup>52</sup> See generally Keegan Hanks. *The most violently racist internet content isn't found on sites like Stormfront and VNN anymore*. Black Hole. SPLC Intelligence Rep. (Mar 10. 2015). <https://www.splcenter.org/fighting-hate/intelligence-report/2015/black-hole>.

<sup>53</sup> *Id.*

<sup>54</sup> The death of George Floyd during the spring pandemic of 2020 created an abundance of discussion on race and racism in America’s criminal justice system but also in other sectors of the economy and life for Black people. For more see Elliott C McLaughlin. *How George Floyd's death ignited a racial reckoning that shows no signs of slowing down*. CNN. (Aug. 9 2020). <https://www.cnn.com/2020/08/09/us/george-floyd-protests-different-why/index.html>.

<sup>55</sup> Taylor Lyles. *Reddit bans racist subreddit after co-founder Alexis Ohanian calls it out on Twitter*. The Verge. (Aug 11 2020). <https://www.theverge.com/2020/8/11/21364019/reddit-bans-racist-subreddit-co-founder-alexis-ohanian-twitter-thread>.

<sup>56</sup> See generally Hanks, *supra* note 50.

<sup>57</sup> *Id.*

and highly publicized shooting deaths of unarmed black teenagers.<sup>58</sup> In 2015 Reddit banned a number of these subreddits known for their extremely racist content,<sup>59</sup> but problems continued. In 2020, Reddit removed 2000 subreddits for violating its hate speech policy.<sup>60</sup>

The reaction to Reddit is a good example of how cancel culture can be effective against hate speech. When the Reddit platform on tweeted on June 1, 2020 "As Snoos [mascot of Reddit], we do not tolerate hate, racism, and violence, and while we have work to do to fight these on our platform, our values are clear," users on Twitter challenged the platform by tweeting their frustrations.<sup>61</sup> As an effective response, the Reddit example suggests that counterspeech may be more effective against hate speech than some think. There is very little research on the effectiveness of cancel culture as a form of counterspeech, but counterspeech has historically been the preferred legal and cultural response to deal with hate speech. This paper will examine cancel culture as a form of counterspeech.

### ***Counterspeech***

This section will give a brief history of counterspeech and explain its use as a legal doctrine. Then this section will describe how counterspeech has been used as a method to

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<sup>58</sup> *Id.*

<sup>59</sup> Janko Roettgers, *Reddit Unveils New Content Policy, Bans Racist Subreddits*, Variety, (Aug 5, 2015) <https://variety.com/2015/digital/news/reddit-unveils-new-content-policy-bans-racist-subreddits-1201557542/>.

<sup>60</sup> Taylor Lyles, *supra* note 55.

<sup>61</sup> Ellen K. Pao. (@ekp), Twitter, (June 1 2020) ("I am obligated to call you [Reddit] out: You should have shut down thedonald instead of amplifying it and its hate, racism, and violence. So much of what is happening now lies at your feet. You don't get to say BLM when reddit nurtures and monetizes white supremacy and hate all day long."). See also (@MetalShayne2000), Twitter, (June 3 2020) ("Is this a fucking joke?! You assholes host some of the vilest, most grotesque racist content on the entire internet because 'muh free speech.'"). See also jessica a. m. (@my2k), Twitter, (June 2 2020) ("are you fucking joking?? your page is literally filled with it every single day and some of your biggest subreddits like /r/the\_donald have been the focal point of the absolute worst of his militant supremacist fans for the last FOUR FUCKING YEARS AND IT ISN'T DELETED YET").

regulate hate speech by using boycotts and boycott speech as an example. Lastly this section will explore the disdain of cancel culture despite its long history of use in other contexts.

Counterspeech has been the preferred method to regulate hate speech in America. In First Amendment jurisprudence, the chosen remedy is to rely on conventional First Amendment principles of punishing conduct, not speech, and fighting offensive speech with counterspeech and education, rather than excluding such hate speech from free debate.<sup>62</sup> The counterspeech doctrine has been linked to Justice Brandeis' concurrence in *Whitney v. California*.<sup>63</sup> In that concurrence, Brandeis wrote: "If there be time to expose through discussion, the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."<sup>64</sup>

This developed into the theory that the remedy for "bad speech" is "more speech" rather than suppressing "bad speech." The original rationale by Brandeis was a case dealing with a plaintiff's association with a communist party,<sup>65</sup> not racist, homophobic, or sexist speech, yet counterspeech has had many applications in First Amendment law. In *Gertz v. Welch*, the Court held that the since public figures have more opportunity to reach a wider audience, they have less

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<sup>62</sup> Edward J. Eberle. *Hate Speech, Offensive Speech, And Public Discourse In America*. 29 WAKE FOREST L. REV. 1135, 1169-70 (1994).

<sup>63</sup> See generally *Whitney v. California*, 274 U.S. 357, 372 (1927). The plaintiff in this case, Charlotte Anita Whitney, was a founding member of the Communist Labor Party of California. See generally *id.* Whitney was prosecuted under California's Criminal Syndicalism Act for helping to organize a group that sought to effect economic and political change through the unlawful use of violence. See generally *id.* Whitney argued that she had not intended the organization to act this way and did not plan to aid it in those objectives and she claimed the California law violated the First Amendment. See generally *id.*

<sup>64</sup> *Id.*, at 377.

<sup>65</sup> See *id.*

protection in defamation claims than private citizens.<sup>66</sup> The allure of counterspeech may have faded almost 15 years later when the Court later acknowledged that an “individual's reputation cannot easily be repaired by counterspeech.” Furthermore, a prominent religious figure was critiqued humorously in *Hustler* magazine, but the speech was still upheld.<sup>67</sup> Most recently, In 2012, the U.S. Supreme Court decided that counterspeech was a strong mechanism that could “overcome the lie”<sup>68</sup> when a man lied about receiving a medal of honor in violation of a federal statute.<sup>69</sup>

Cancel culture may be most like “boycott speech,” as a form of counterspeech. The calls for boycotts are not new, with Americans first using the power of boycotts to reject the English overreach of power during the British-American war.<sup>70</sup> Boycotts have been used in the Black community since the early twentieth century.<sup>71</sup> At the time the demands from these boycott groups called for more Black people to be hired in numerous industries.<sup>72</sup> As Black people increased their buying power by acquiring more high paying jobs, they now could protest

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<sup>66</sup> See *Gertz v. Welch* 418 U.S. 323 (1974) (finding that public figures can engage in counterspeech in a meaningful way)

<sup>67</sup> *Hustler v. Falwell*, 485 U.S. 46, 52 (1988). The magazine portrayed the plaintiff as having engaged in a drunken incestuous rendezvous with his mother in an outhouse. *Id.*, at 46. See also Robert D. Richards and Clay Calver. COUNTERSPEECH 2000: A NEW LOOK AT THE OLD REMEDY FOR “BAD” 2000 BYU L. REV. 553, 555. (2000).

<sup>68</sup> See *United States v. Alvarez*, 567 U.S. 709, 724 (2012).

<sup>69</sup> See *id.*

<sup>70</sup> Katherine Parkin, *Marketing Justice: The Christmas Boycott*, History of Retailing and Consumption 1, 2 (2020) <https://doi.org/10.1080/2373518X.2020.1778377>.

<sup>71</sup> See David Oppenheimer, DR. KING'S DREAM OF AFFIRMATIVE ACTION, 21 HARV. LATINX L. REV. 55, 63 (2018).

<sup>72</sup> *Id.* See also Stacy Kinlock Sewell, *The “Not-Buying Power” of the Black Community: Urban Boycotts and Equal Employment Opportunity, 1960-1964*, 89:2 The Journal of African American History 135, 6, (Spring, 2004), The University of Chicago Press (“North Chicago, Detroit, and New York City all experienced consumer boycotts that aimed to win employment for African Americans, both before and after WWII.”).

business economically.<sup>73</sup> The phrase “Don’t Shop Where You Can’t Work” became a popular slogan for boycotts and pickets.<sup>74</sup> Often members of nonviolent protest groups in the 1960s would research organizations to see how many Black employees they had.<sup>75</sup> If the number was insufficient, they would set a meeting with management to negotiate jobs for Black women and men.<sup>76</sup> Management would usually comply with the request for an appointment . Doing otherwise would draw public embarrassment, boycotts, and picket lines.<sup>77</sup>

When the NAACP held a boycott of white owned businesses in Claiborne County, Mississippi, white merchants sued for damages from the speeches at the boycott.<sup>78</sup> The demands from Black citizens called “for equal rights and opportunities for Negro citizens” or “they would impose selective buying practices.”<sup>79</sup> Intimidation, threats, social ostracism, and vilification were

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<sup>73</sup> See generally *id.* The lunch counter manager at the well-known boycott at the Woolworth's lunch counter, too, denoted with resentment, thirty-eight years after the boycott that he lost \$150,000 altogether. *Id.*, at 139. By the 1940s, businesses nationally became increasingly aware of the financial might of African Americans, estimated to be about \$12–15 billion dollars, a number continually asserted in business reports as equivalent to the purchasing power of the population of Canada. Katherine Parkin *supra*, note 67 at 2.

<sup>74</sup> David Oppenheimer, *supra* note 68 at 65.

<sup>75</sup> Stacy Kinlock Sewell, *supra* note 68 at 142.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 7 (1982). The testimony in the lower court showed that the principal objective of the boycott was to “force the white merchants of Port Gibson and Claiborne County to bring pressure upon governing authorities to grant defendant’s demands or, in the alternative, face economic ruin.” *Id.*, at 893 footnote 8. The demands were listed in a petition that received little action after it was presented. *Id.*, at 900.

<sup>79</sup> *Id.*, at 899. The demands called for the desegregation of all public schools and facilities, the hiring of Black policemen, public improvements in Black residential areas, section of Black people for jury duty, integration of bus stations so that Black people could use all facilities, and an end to verbal abuse by law enforcement officers. *Id.* It also called for Black people to not be addressed by terms ‘boy’, ‘girl’, ‘shine’, ‘uncle’ or any other offensive term. *Id.*

some of the devices used to achieve the desired results.<sup>80</sup> There were a few instances of physical violence that were also used to punish Black patrons of white businesses on the no-shop lists.<sup>81</sup> The Court ultimately held that the speech was constitutional even though the boycott used ostracization and social pressure to convince people to participate.<sup>82</sup>

Cancel culture may be most like the “boycott speech” that occurred in Claiborne County, Mississippi. Boycott proponents believed that the best way to bring about change and to draw attention to injustices was to deprive white-owned companies of their money.<sup>83</sup> While many of the boycotts were over discrimination practices, protestors also called for Black patrons to be called “Mr. and Mrs.” instead of “boy and girl.” This is similar to consumer calls for increased diversity by companies on social media<sup>84</sup> and criticisms made by the LGBTQIA+ community and their allies on social media for other users using the wrong pronouns.<sup>85</sup> While there may

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<sup>80</sup> *Id.*, at 894. Most notably was the stationing of guards outside of white owned businesses. *Id.* Black people seen shopping at those stores were socially ostracized and called deeming names. *Id.*, at 906.

<sup>81</sup> A birdshot was fired into the home of a Black man that ignored the boycott. *Id.*, at 905 footnote 37. A brick was thrown into the car of another Black person that continued to shop at white merchants. *Id.*, at 905 footnote 38. Another person testified at trial that he would be whipped for buying gas at the wrong place. *Id.*, at 906.

<sup>82</sup> *Id.*, at 910 (“Speech does not lose its protected character, however, simply because it may embarrass or coerce others into action.”).

<sup>83</sup> Katherine Parkin *supra* note 67 at 2. Moreover, approaches varied from local quid-pro-quo efforts to much broader aims, such as raising awareness of differential treatment across the country. *Id.*, at 3.

<sup>84</sup> See ML Wei & Benita Bunjun, *We are not the shoes of white supremacists’: a critical race perspective of consumer responses to brand attempts at countering racist associations*, 36:13-14 *Journal of Marketing Management* 1252, 74 (2020) <https://doi.org/10.1080/0267257X.2020.1806907>.

<sup>85</sup> Shawn Mendez was called out for misgendering Sam Smith at an award ceremony. Eileen Reslen, *Shawn Mendes apologizes to Sam Smith for using wrong pronouns*, Page Six, (Dec. 11 2020), <https://pagesix.com/2020/12/11/shawn-mendes-apologizes-to-sam-smith-for-wrong-pronouns/>. (“Several people took notice of the flub on social media with one person tweeting, ‘Hi @ShawnMendes, you misgendered Sam Smith while introducing them yesterday at the jingle ball using ‘he’ when they officially go by the pronouns, they/them. When know you meant no harm and it was unintentional, but you owe an apology for Sam and your non-binary fans.’”).



have been more of a focus on the organization or business rather than on individuals during the civil rights era,<sup>86</sup> individuals were also targeted during the Civil Rights Movement and boycotts.<sup>87</sup> Violators of the boycotts in Claiborne County would have their names read aloud at church and published in the local Black newspaper.<sup>88</sup> Practitioners of nonviolent direct action, such as CORE, protested job discrimination in the streets, by embarrassing employers who hired few or no African Americans.<sup>89</sup>

There is a distinctive difference between the boycotts of the civil rights era and cancel culture. The boycotts were about harnessing a collective power for purposes of furthering an affirmative vision of economic equality whereas cancel culture seems to be more of a countervailing defensive mechanism to hate speech.

Criticism of cancel culture is like criticism of the boycotters during the “Don’t Shop Where You Can’t Work” era. For months during the 1960s, a quarter of Philadelphia’s residents boycotted Sunoco Gas, Pepsi-Cola, Breyer’s Ice Cream, or Tastycakes, while local ministers persisted in negotiations with companies’ management to hire more Black employees.<sup>90</sup> The employers responded by using words like force, demand, and intimidation to describe the

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<sup>86</sup> For example, Rev Sullivan led a movement in Philadelphia to secure local jobs for Black community members they would meet with the CEO of the businesses, present their demands, and if they would refuse then the committee ministers would vote on whether to boycott the business. *NAACP v. Claiborne Hardware Co.*, at 910.

<sup>87</sup> *NAACP v. Claiborne Hardware Co.*, at 910 (finding that violators of the boycotts in Claiborne County would have their names read aloud at church and published in the local Black newspaper.) Practitioners of nonviolent direct action, such as CORE, protested job discrimination in the streets, by embarrassing employers who hired few or no African Americans. Stacy Kinlock Sewell, *supra* note 68 at 137.

<sup>88</sup> *NAACP v. Claiborne Hardware Co.*, at 910.

<sup>89</sup> Stacy Kinlock Sewell, *supra* note 68 at 137.

<sup>90</sup> *Id.*

boycotts.<sup>91</sup> Many Civil Right activists discouraged the use of the word “boycott” during pickets for fear of retribution and would instead use “selective patronage.”<sup>92</sup> Activists who used boycotts as a strategy were characterized as being disruptive and some business owners who were targeted were surprised by national boycotts because of the “good racial relationship” that existed in the 1960s between white and Black people.<sup>93</sup> Ironically, some well-known actors and actresses were “canceled” for their association in the movement.<sup>94</sup> Popular Broadway stars Ossie Davis and Ruby Dee were shut out of employment for signing a petition against the execution of Willie McGee.<sup>95</sup>

Still, even with the historic similarities between boycott speech and cancel culture, First Amendment scholars are still critical of cancel culture’s place in the free speech environment. Traditional First Amendment scholars like Terri R. Day & Danielle Weather argue that political correctness, a reluctance, or discouragement of people from saying something terribly unpopular, damages the free speech environment even when it discourages racist speech or

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<sup>91</sup> *Id.*

<sup>92</sup> Katherine Parkin *supra*, note 67 at 3 (“Two students carrying signs imploring shoppers to ‘Boycott Capitol Street – Buy Elsewhere’ found themselves arrested by white police officers on the charge of ‘obstructing the sidewalk,’ another tactic to impede protestors.”).

<sup>93</sup> *Id.*, at 15-18. Jackson, for example, passed ‘severe laws against such demonstrations’ and many African Americans feared antagonizing the white community. *Id.*, at 3.

<sup>94</sup> *Id.*, at 11.

<sup>95</sup> *Id.* Willie McGee was arrested on charges of raping a white housewife. *My Grandfathers Execution*. All Things Considered. NPR. (May 10 2010). The victim testified that a black man had broken into her house, told her he had a knife, and raped her while her baby slept next to her. *Id.* When McGee was charged for the crime, his lawyers encouraged him to plead insanity. *Id.* He claimed that his real defense, that he was having an affair with the white woman, was too inflammatory at the time. *Id.* The case was then taken over by a civil rights group called the Civil Rights Congress. The Congress held rallies and petitions across America using the slogan “Save Willie McGee.” *Id.*

microaggressions on college campuses.<sup>96</sup> Those opposed to legal remedies for hate speech, such as speech codes on campuses, also argue against speech that silences or suppresses offensive speech.<sup>97</sup> Nadine Strossen argues that hate speech should not be regulated by the government because it is a subjective term.<sup>98</sup> However, Strossen and authors like her also take issue with the public suppressing this speech as well.<sup>99</sup> One study on public shaming online found evidence that may suggest cancel culture could make people uncomfortable to speak online.<sup>100</sup> This data does suggest that there could be a risk that people will be less likely to participate at all in discussion for fear of being “canceled.”<sup>101</sup> There is also evidence that cancel culture contributes to the spiral of silence.<sup>102</sup> To Strossen, silencing is never an efficient method to effectuate change

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<sup>96</sup> Terri R. Day & Danielle Weather, *supra* note 24 at 848 (arguing “the Holmesian notion of an open exchange of ideas has yielded to silence through self-censorship or censorship caused by the drowning shouts of those who oppose the speech” because of political correctness on college campuses).

<sup>97</sup> See generally Terri R. Day & Danielle Weather, *supra* note 96 (arguing that speech codes on campus and political correctness are both insufficient to regulate hate speech).

<sup>98</sup> See generally Nadine Strossen, *Hate: Why We Should Resist It with Free Speech, Not Censorship*, Oxford Press (2018).

<sup>99</sup> *A letter on justice and open debate*. Harper’s Magazine. (Jul. 7, 2020). <https://harpers.org/a-letter-on-justice-and-open-debate/>.

<sup>100</sup> One study of 321 young adults ages 18-24 concerning or not concerning found that results confirmed that witnessing or experiencing acts of online shaming could lead to a reduction in social media posting for some users. They found a correlation between young adults that witness online shaming and a decrease in frequency of posts. Ethan M. Huffman, *Call-out culture: How online shaming affects social media participation in young adults*, ProQuest Dissertations & Theses Global, Retrieved from <http://libproxy.lib.unc.edu/login?url=https://www-proquest-com.libproxy.lib.unc.edu/docview/1795577817?accountid=14244> (2016).

<sup>101</sup> See *id.*

<sup>102</sup> Pippa Norris, *Closed Minds? Is a ‘Cancel Culture’ Stifling Academic Freedom and Intellectual Debate in Political Science?* (August 3, 2020). HKS Working Paper No. RWP20-025, 15 <http://dx.doi.org/10.2139/ssrn.3671026> (finding growing restrictions on academic freedom of speech, pressures for ideological conformity, and the enforcement of politically correct speech.) The spiral of silence describes situations where, for fear of social isolation or loss of status, people are cautious to express authentic opinions contrary to majority social norms. Elisabeth Noelle-Neumann, *The Spiral of Silence*, Chicago University Press, (1974). The more that individuals feel that their opinion reflects majority opinion, however, the more likely they become to voice it in public. *Id.*

in the marketplace. However, for certain speech a shutdown could be efficient in correcting imbalances.

Ideal counterspeech remedies might include public denunciation of hate and bias, educational teachings about the evil of bigotry and the need for maturity and tolerance in responding to it, or public demonstration of support for diversity and mutual respect.<sup>103</sup> We may not be forceful enough in our condemnation of hate speech;<sup>104</sup> still, some conclude that government should better regulate conduct instead of speech and that that will in turn slowly regulate the harmful speech.<sup>105</sup>

### ***Cancel culture as a form of counterspeech against hate speech***

This section will first introduce how cancel culture operates as a form of counterspeech through shame. This section will then discuss the challenges with evaluating cancel culture as a form of counterspeech by providing some brief examples of cancel culture. Then this section will explain the criticism of cancel culture as a form of counterspeech. Lastly, this section will explain the limitations of counterspeech and how cancel culture may cure some of those limitations. Lastly, this section will discuss how the lenses in which cancel culture has, or could be, examined to regulate hate speech online.

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<sup>103</sup> Eberle, *supra* note 58 at 1208. See also Jessica Bennett, *What if Instead of Calling People Out, We Called Them In?*, New York Times (Nov. 19 2020) (stating that we should have conversations with compassion and context).

<sup>104</sup> Eberle, *supra* note 58 at 1208.

<sup>105</sup> *Id.*

The legal system punishes by means of stigmatization, monetary penalties, and incarceration while norm regulators punish through numerous methods.<sup>106</sup> Norms instead can shift beliefs by signaling to others that they should act in a certain way.<sup>107</sup> Norms have been central to the practice of content moderation on platforms.<sup>108</sup> Norms regulate our conduct in the real world differently than online. If a consumer wanted to purchase an explicit movie, they would worry about the cashier's frown or sneer for their purchase – machines do not sneer. People will tolerate norm violators when they try to conceal the violation rather than publicly flaunt it.<sup>109</sup> The anonymity or pseudonymity of online profiles makes it easier to participate in hate speech without being held accountable by social norms.

Cancel culture uses shame as norm regulation to achieve its results. As stated before, “canceling” can take many forms. It can eliminate followings for the canceled person or organization's social media page. It can mean refusing to participate in activities that generate wealth for the person or organization such as streaming their music or buying their products. It can also involve challenging or shaming the person's ideas by commenting directly on the page or in a separate post. Canceling strategies typically use social media to shame individuals with the intention of exerting penalties with different degrees of severity.<sup>110</sup> While such outcomes are

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<sup>106</sup> Robert C. Ellickson, *Order Without Law: How Neighbors Settle Disputes*, <https://ebookcentral-proquest-com.libproxy.lib.unc.edu/lib/unc/reader.action?docID=3300186&query=> (1991).

<sup>107</sup> Eric A. Posner, *Law and social norms*, Harvard University Press (2000).

<sup>108</sup> Lisa Nakamura, *The Unwanted Labour of Social Media: Women of Colour Call out Culture as Venture Community Management*, *New Formations*, no. 86 (September 2015): 106–12. doi:10.3898/NEWF.86.06.2015.

<sup>109</sup> Eric A. Posner, *supra* note 107.

<sup>110</sup> Pippa Norris, *supra* note 83.

traditional in boycotts<sup>111</sup> critics often say cancel culture has no place in the free speech environment even when targeting offensive speech that is protected by the First Amendment. John Stuart Mill in *On Liberty* wrote that by questioning dogma and the conventional wisdom we can be aware of our prior values and beliefs.<sup>112</sup> People argue that public shaming, which is more speech, can cause self-censorship because people can become afraid of being challenged publicly for their views.<sup>113</sup>

Critics of cancel culture often comment on its proportionality as a response mechanism and its effect on the likelihood to speak in the future.<sup>114</sup> First, cancel culture can, of course, cross into boundaries that are harmful and potentially tortious, but it can be hard to draw that line. “An essay deriding a young girl for smiling in a selfie at Auschwitz might be considered shaming; anonymous emails sent three weeks later calling for the girl to die, be raped, or kill herself would be better considered cyber harassment.”<sup>115</sup> Cancel culture sometimes falls into both categories.

Further, what is considered criticism versus harassment may depend on what or who is being canceled, and on personal beliefs and identity. For example, when manspreading (the act of subway riders--typically men--spreading their legs so far apart that other riders had little or no space to sit) was canceled online, some applauded this as a successful example of cancel culture,

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<sup>111</sup> *Id.*, at 2 (stating that cancel culture is like consumer boycotts withdrawing support for perceived unethical brands and corporations).

<sup>112</sup> John Stuart Mill. *On Liberty*. (1865).

<sup>113</sup> Pippa Norris, *supra* note 83.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*, at 7

while others felt like it went too far.<sup>116</sup> For example, one female author commenting on the phenomenon of canceling manspreading pointed out that the public shaming was successful because it discouraged the behavior and opened discursive spaces in which women could talk about gender privilege and the challenges of navigating male-dominated public spaces.<sup>117</sup> But a male author contended that posting online photos of men riding the subway violated their privacy, particularly when memes made their behavior viral on the internet.<sup>118</sup> On May 8th, 2013, the Tumblr blog "Men Taking Up Too Much Space on the Train" was launched and highlighted photographs of men sitting with their legs spread in New York City subway trains.<sup>119</sup>

This example demonstrates how the discussions by scholars about the social implications of cancel culture are sometimes centered on whether the offending behavior changed (i.e., *did men stop manspreading?*), and to a lesser degree on whether the discussion empowers women to speak about manspreading or about women's positions in public spaces. Additionally, it demonstrates how and whether it encouraged men to think about their role in helping marginalized groups to feel more comfortable in public spaces. It is hard to tell. A Huffington Post article notes that the blog led to the creation of another similar Tumblr blog, "Move The

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<sup>116</sup> Compare Kate Klonick's opinion of cancel culture targeting manspreading with Allen opinion of cancel culture. Compare Kate Klonick, *supra* note 91 with Sam Allen, *Online shaming gives creeps the spotlight they deserve: Women are coming together online to shame men who harass and abuse them. but can online embarrassment spark a real change in behavior?* The Daily Beast (Sep. 23 2014) Retrieved from <http://libproxy.lib.unc.edu/login?url=https://www-proquest-com.libproxy.lib.unc.edu/docview/1649028115?accountid=14244> ("If we aren't altering men's behavior, then, what are we hoping to accomplish when we shame men on the Internet?").

<sup>117</sup> Kate Klonick, *supra* note 91.

<sup>118</sup> Sam Allen, *supra* note 95.

<sup>119</sup> Don. Manspreading. Know Your Meme. <https://knowyourmeme.com/memes/manspreading>.

F\*ck Over, Bro,”.<sup>120</sup> Other users on the blog argued that that men take up more space because they are larger and longer legs and, “because they need to sit with their legs wide open to protect their balls, or because women have a lower center of gravity.”<sup>121</sup> It was not confirmed whether these responses were from men.

Whether “canceling manspreading” is a good method to regulate behavior is debatable, but canceling hate speech may be an even more divisive issue not only because of protections for hate speech under the First Amendment but because of a strong cultural commitment to free expression, what Mary Anne Franks describes as the “cult of free speech.”<sup>122</sup> Franks believes that free speech fundamentalists favor a utilitarian view of free speech; that is, speech, however harmful, is necessary for the greater good of the free speech environment.<sup>123</sup> While Franks and others attach this sentiment to several examples of conservative speakers,<sup>124</sup> this idea is beloved by many Americans. In fact, online influencers with many followers and across different political ideologies have expressed their disdain for cancel culture. Comedian Bill Bur,<sup>125</sup>

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<sup>120</sup> Nina Bahadur. ‘Men Taking Up Too Much Space On The Train’ Tumblr Raises Some Interesting Questions About Being Male In Public. Huffington Post. (Sep. 27 2013). [https://www.huffpost.com/entry/men-taking-up-too-much-space-on-the-train\\_n\\_3921150](https://www.huffpost.com/entry/men-taking-up-too-much-space-on-the-train_n_3921150).

<sup>121</sup> *Id.*

<sup>122</sup> Mary Anne Franks. The Cult of Free Speech, *The Cult of the Constitution*, 110, Stanford Univ. Press (2020).

<sup>123</sup> *Id.*

<sup>124</sup> Mary Anne Franks uses several examples of conservative speakers such as the group in Charlottesville and White men. See Franks, *supra* note at 105-59. See also generally, Farhana Sultana. *The false equivalence of academic freedom and free speech: Defending academic integrity in the age of white supremacy, colonial nostalgia, and anti-intellectualism*. 2 An International Journal for Critical Geographies 17, (2018).

<sup>125</sup> David Dennis, Jr. *Why There’s Never Been a Funny Cancel-Culture Joke*. Medium. (Oct 25). <https://level.medium.com/why-theres-never-been-a-funny-cancel-culture-joke-6a34e12aaf78>.



novelist J.K. Rowling,<sup>126</sup> and former presidents Barack Obama<sup>127</sup> and Donald Trump<sup>128</sup> have all criticized cancel culture.

Often in First Amendment jurisprudence, we tip the scale in the favor of the speaker's discomfort and assume that more speech is better than less speech.<sup>129</sup> However what gets overlooked in the hate speech context is how victims of hate speech lose their own sense of comfort in society and may suffer significant psychological harm that ostracizes them from entering the marketplace of ideas.<sup>130</sup>

Richard Delgado and Jean Stefancic maintain that First Amendment doctrine is equipped to handle "small, clearly bounded disputes," but is "less able to deal with systemic social ills, such as racism and sexism, that are widespread and deeply woven into the fabric of society."<sup>131</sup> Delgado and Stefancic might assume that the attacks on cancel culture are similar to the resistance to allow legal restraints on hate speech.<sup>132</sup> It is the dedication to legal formalism in the free speech context – “more speech over less speech” and tipping the scale in favor of the speaker –

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<sup>126</sup> Sam Shead. *JK Rowling criticizes 'cancel culture' in open letter signed by 150 public figures*. CNBC. (Jul. 8 2020). <https://www.cnbc.com/2020/07/08/jk-rowling-cancel-culture.html>.

<sup>127</sup> Jonah Engel Bromwich. *Obama Woke Cancel Culture*. New York Times. (Mar. 10 2019). <https://www.nytimes.com/2019/10/31/us/politics/obama-woke-cancel-culture.html>.

<sup>128</sup> Jeanine Santucci. *Trump decries 'cancel culture,' but does he participate in it? He's called for boycotts and punishment for critics*. USA Today. (Sep. 2 2020) <https://www.usatoday.com/story/news/politics/2020/09/03/trump-decries-cancel-culture-but-he-has-participated/3451223001/>.

<sup>129</sup> Richard Delgado, *supra* note 32 at 778.

<sup>130</sup> *Id.*

<sup>131</sup> Richard Delgado & Jean Stefancic, *supra* note 48.

<sup>132</sup> See Richard Delgado & Jean Stefancic, *Four Ironies of Campus Climate*, 101 MINN. L. REV. 1919, 1927 (2017) (writing that hate speech is socially condemned but has had a lot of resistance being condemned legally).

that makes regulating hate speech in the legal sense challenging.<sup>133</sup> According to Delgado and Stefancic, the First Amendment has overwhelmingly maintained a normative approach rather than a realist one.<sup>134</sup> Free speech rhetoric is sometimes used by those who would “shut down the right to free speech by variously positioned others and those who work on anti-racism, anti-fascism, anti-colonialism, feminism, and social justice advocacy.”<sup>135</sup> By looking at cancel culture as a form of counterspeech that regulates hate speech, what may be found is that it reclaims some of the power in the speech environment.

Cancel culture as counterspeech should be studied for its effectiveness to suppress hate speech because it may address several issues with counterspeech that many other legal scholars have discussed. Richard Delgado suggests that minorities are not as successful when using counterspeech because historically these communities lack agency and credibility as speakers.<sup>136</sup> Mari Matsuda argues as well that some minority groups experience “diminished access to private remedies such as effective counterspeech.”<sup>137</sup> Hate speech also may have what Professor Owen Fiss describes as a “silencing effect” on its victims, disabling and discrediting “a would-be

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<sup>133</sup> *Id.*, at 1924-5

<sup>134</sup> *Id.*, at 1925-6 (mentioning that “thought-ending clichés (the best cure for bad speech is more speech) still hold sway” in the legal system).

<sup>135</sup> See Farhana Sultana, *supra* note 103.

<sup>136</sup> Richard Delgado, *supra* note 32 at 794 (“Why not go further to point out that even when minorities are not silenced their speech is often futile.”).

<sup>137</sup> See Mari J. Matsuda et al., *Words That Wound: Critical Race Theory, Assaultive Speech, And The First Amendment*, 48, 1<sup>st</sup> edition, (1993). Catharine A. MacKinnon, the feminist legal scholar, suggests that the same problem observed by critical race theorists—limited access to the means of communication—plagues those who would use counterspeech to criticize individuals in power. Catharine A. MacKinnon, *Only Words*, 77, HARV. UNIV. PRESS (1996). See also Jerome Baron, *Access to the Press: A New First Amendment Right*, 80 Harv. L. Rev. 1641, 43 (1967) (“...few private hands are in a position to determine not only the content of information but its very availability.”). Access to the press is not an inherent right within the First Amendment. See generally *id.*

speaker” and thereby reducing the effectiveness of counterspeech.<sup>138</sup> In essence it is about a power dynamic. Counterspeech works less well for groups of color or other marginalized groups because of lesser power.

Cancel culture is important to study because: (1) it is a tool that has historically been used by marginalized groups<sup>139</sup> and (2) it often occurs at the grassroots-level online and is mostly decentralized. There is not a formal complaint box or a direct area where cancel culture occurs when offended peers have a grievance. At times, users on Twitter will use hashtags such as the #[insert celebrity or brand name]isoverparty. Some will write think pieces like the long-standing blog on tumblr dedicated to #problematic celebrities.<sup>140</sup> There are no rules about how you “cancel” someone or where you do it. This is like boycott speech. One reason that boycotts were so appealing to the civil rights movement was that they allowed individuals and communities to demand change without depending on powerful leaders, outside protestors, student foot-soldiers or people ready to go to prison.<sup>141</sup>

Moreover, the fact that social media is polarized and occurs within filter bubbles can help minority groups feel more affirmed in their own ideas.<sup>142</sup> The separation of the network of Black

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<sup>138</sup> Owen M. Fiss, *The Irony Of Free Speech*, 25, HARV. UNIV. PRESS (1996).

<sup>139</sup> Lisa Nakamura, *supra* note 16 at 107.

<sup>140</sup> your fave is problematic. Tumblr. <https://yourfaveisproblematic.tumblr.com/list>.

<sup>141</sup> Katherine Parkin, *supra* note 67 at 3.

<sup>142</sup> Cass R. Sunstein. *#republic Divided democracy in the age of social media*. Princeton University Press. (Apr. 3, 2018) 86. Cass Sunstein notes that for some issues greater discussion will breed greater extremism online but notes that not all extremism is bad. *Id.* For example the civil rights movement was considered extreme during its time. *Id.*

Twitter users called attention to issues faced by the Black community.<sup>143</sup> #Ferguson was used to discuss the killing of Mike Brown by police and the #YouOKSis raised awareness for women facing street harassment.<sup>144</sup> Communication scholar Eve Ng found that cancel culture can lead to more informative communication by directing people to spaces which foster more long-form engagement.<sup>145</sup> Scholar Meredith Clark argued that cancel culture could be a useful application of “anger by minoritized people and groups” and a strategy to address existing social problems.<sup>146</sup>

Scholars Robert D. Richards and Clay Calvert wrote in their article in 2000 that “counterspeech is most effective when its proponents can call journalistic attention to their message, place it on the media's agenda, and thereby exponentially increase the audience to whom the message is disseminated.”<sup>147</sup> They argued against critical scholars who believed that counterspeech was ineffective at regulating hate speech and argued that counterspeech could be effective if the message against “bad” speech was broadcast widely.<sup>148</sup> As an example they examined billboards directed at the Ku Klux Klan in Missouri.<sup>149</sup> They found the billboards to be effective because of their ability to attract the attention of the local paper and then a larger

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<sup>143</sup> Donovan X. Ramsey, *The Truth About Black Twitter*, The Atlantic, (Apr. 10 2015), <https://www.theatlantic.com/technology/archive/2015/04/the-truth-about-black-twitter/390120/>.

<sup>144</sup> *Id.*

<sup>145</sup> Eve Ng, *No Grand Pronouncements Here...: Reflections on Cancel Culture and Digital Media Participation*, 21:6 Television and New Media 621, (2020) <https://doi.org/10.1177/1527476420918828>.

<sup>146</sup> Meredith D. Clark, *DRAG THEM: A brief etymology of so-called “cancel culture”*, 5:3-4 Communication and the Public 88, (2020) <https://journals.sagepub.com/doi/abs/10.1177/2057047320961562>.

<sup>147</sup> Richards & Claver, *supra* note 68 at 556.

<sup>148</sup> *Id.*, at 561.

<sup>149</sup> *Id.*

audience.<sup>150</sup> Cancel culture has a similar goal of raising awareness of “bad” speech. While these scholars may not agree with all the counterspeech messages cancel culture uses,<sup>151</sup> Richards and Calvert would likely agree that social media can do a much better job of reaching larger audiences than a local newspaper.<sup>152</sup>

Technology is a tool of minority groups to receive increased coverage of their issues and affirmation in their shared experiences.<sup>153</sup> Furthermore, social media has made responding to hate speech more accessible. It may be easier and safer to type a message online than it is to respond in person.<sup>154</sup> If it is an effective form of regulating hate speech online, then it could be a signal that it can help restore speech power imbalances.<sup>155</sup>

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<sup>150</sup> *Id.*

<sup>151</sup> Richards and Calvert called attempts to take down or vandalize billboard put up by the Klan private censorship while praising the billboards stating, “Freedom of speech protects all people even if they are wrong”, later erected by a civil rights group in response to the Klan for its commitment to tolerance. *Id.*, at 559.

<sup>152</sup> A viral tweet on twitter can generate millions of impressions. Jen Deering Davis. *What happens when a tweet goes viral*. Union Metrics. (Aug. 24 2016) <https://unionmetrics.com/blog/2016/08/when-a-tweet-goes-viral/> (showing how Over the course of a week, a viral tweet generated more than 2500 retweets, 3700 likes, and 5 million potential impressions).

<sup>153</sup> See Sunstein, *supra* note 79.

<sup>154</sup> Kate Klonick. *Re-Shaming the Debate: Social Norms, Shame, and Regulation in an Internet Age*. 75:4, MD. L. REV. (2016) <http://dx.doi.org/10.2139/ssrn.2638693>.

<sup>155</sup> For example, when a professor wrote an article in the Atlantic about the fear professor’s face from cancel culture, he assumed that because only white students formally complained about another professor’s use of a racial slur that the other Black students were not offended by it. John Mcwhorter. *Academics Are Really, Really Worried About Their Freedom*, The Atlantic, (Sep. 1 2020) <https://www.theatlantic.com/ideas/archive/2020/09/academics-are-really-really-worried-about-their-freedom/615724/>. (A white professor read a passage from an interview with a well-known Black public intellectual who mentions the rap group NWA, and because few of the students knew of the group’s work at this late date, the professor parenthetically noted what the initials stand for. None of the Black students batted an eye, according to my correspondent, but a few white students demanded a humiliating public apology.”) Social media is a place where those Black students could potentially voice their grievances with the professor and be heard from people with like experiences without being labeled as a troublemaker or too sensitive in class.

The purpose of this paper is to fill the gap in the literature by exploring cancel culture as an effective strategy within the First Amendment's counterspeech doctrine through its ability to regulate hate speech online. Chapter two will explain how Critical Race Theory will be used as a theoretical perspective to inform the interdisciplinary research this thesis will address. Chapter two will also present the research questions and method to answer those research questions. Chapters three, four, and five examine three case studies of cancel culture on Twitter by examining the discourse around three people that were canceled: JK Rowling, Sia, and Mimi Groves. Chapter six will answer research question one. Chapter seven will present the findings for research question two and will answer question two. Chapter eight is the conclusion.

## CHAPTER TWO

### THEORY AND METHOD

#### *Critical Race Theory*

This thesis will rely on Critical Race Theory (CRT) as the theoretical perspective through which to study the effectiveness of cancel culture as a type of counterspeech. Pure marketplace theory may support cancel culture as a form of counterspeech in some ways, but the interpretation that the public sphere should never encourage suppressing speech is limiting to goals of the marketplace of ideas. This is where CRT proves helpful. This chapter will provide brief background information on Critical Race Theory and how it will contribute to the study. Then this chapter will explain how confrontation theory relates to cancel culture. Lastly this chapter will argue that through confrontation theory, cancel culture is an effective tool at regulating hate speech. This chapter will also explain the methodology and what research questions will be answered in this thesis.

Critical Race Theory (CRT) provides an important perspective for evaluating whether cancel culture is effective at regulating hate speech. CRT was born out of panels and discussion from some of the top law school professors in the country about race and the law.<sup>156</sup> According to Kimberlé Crenshaw, many of the first discussions had to do with the irony of how the law was clear on diversity and affirmative action yet the Black law students and professors at those panels

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<sup>156</sup> Richard Delgado and Jean Stefancic. *Racial Realism*, Critical Race Theory (Third Edition) 4 : An Introduction, New York University Press, 2017. ProQuest Ebook Central, <http://ebookcentral.proquest.com/lib/unc/detail.action?docID=4714300>.

and discussions could count on one hand the number of Black students or professors at their respective law schools.<sup>157</sup> These discussions led to students and professors to encourage schools to provide instruction that would examine the intersection of race and law.<sup>158</sup>

CRT was a departure from the already existing Critical Legal Studies (CLS) approach to critical legal scholarship.<sup>159</sup> CRT borrows some concepts from the previous CLS theory, but it differs in several ways. From critical legal studies, the group borrowed the idea of legal indeterminacy—the idea that not every legal case has one correct outcome.<sup>160</sup> Instead, one can decide most cases either way, by emphasizing one line of authority over another. Both theories are also skeptical of power structures and the impact of legal precedent such as *Brown v. Board of Education*, for example.<sup>161</sup> However CLS scholars claim that engaging in rights discourse is incompatible with a broader strategy of social change. They view the extension of rights, although perhaps energizing political struggle or producing apparent victories in the short run, as ultimately legitimating the racial inequality and oppression that such extension purports to remedy.<sup>162</sup>

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<sup>157</sup> Kimberlé Crenshaw. *Twenty Years of Critical Race Theory: Looking back to Move Forward*, 43 CON. L. REV. 5, 1253, 1262 (2011). When another prominent founder of CRT and professor at Harvard Law School, Derek Bell, left the institution Crenshaw describes how Black law students at the school discussed seeing segregation at a school in a “post-segregation” society. Kimberle Crenshaw. THE FIRST DECADE: CRITICAL REFLECTIONS, OR “A FOOT IN THE CLOSING DOOR”. 49 UCLA L. REV. 1343, 44 (2002).

<sup>158</sup> *Twenty Years of Critical Race Theory: Looking back to Move Forward*, *supra* note, 159 at 1262.

<sup>159</sup> *Racial Realism*, *supra* note 158.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Kimberlé Williams Crenshaw. RACE, REFORM, AND RETRENCHMENT: TRANSFORMATION AND LEGITIMATION IN ANTIDISCRIMINATION LAW, 101 HARV L. REV. 1331, 35 (1988).



The departure from CLS is represented in the CRT's focus on race and history that critical race theorists wanted to emphasize in their studies.<sup>163</sup> Kimberlé Crenshaw denotes this as non-racial radicalism that permeated CLS.<sup>164</sup> "The eruption that served as a point of departure in CRT's trajectory was the institutional struggle over race, pedagogy, and affirmative action at America's elite law schools."<sup>165</sup> CRT emerged not only as a critical intervention in a particular law school's tension over race, "but also as a race intervention in a critical space, namely CLS."<sup>166</sup>

CRT has several assumptions First, CRT assumes that race is a socially constructed product of social thought and relations and that racism is normal, ordinary, and ingrained into society, making it difficult to recognize.<sup>167</sup> CRT takes the position that protecting racist speech further preserves the interests of those in powerful positions. Second, CRT promotes an intersectional approach to solving problems,<sup>168</sup> and, accordingly, CRT uses an interdisciplinary lens to examine issues on race, sex, and gender. Since cancel culture is not a strictly legal issue, but one using First Amendment principles to examine a cultural phenomenon, it is best to

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<sup>163</sup> *Twenty Years of Critical Race Theory: Looking back to Move Forward*, *supra*, note 152.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*, at 1264.

<sup>166</sup> *Id.*

<sup>167</sup> *Racial Realism*, *supra* note 158. Race is based on superficial features such as skin color, hair texture, and facial characteristics, individuals are designated into racial categories by both themselves and society. Courtney Jensen, *The Social Construction of Race, Inequality, and the Invisible Role of the State*, *State Crimes Against Democracy* 135 (2013). Racial categorization forces individuals into arbitrary categories that limit an individual's autonomy to identify him or herself, may have only a limited connection to the individual's actual identity, and socialize individuals to live according to scripts that are not of their own choosing. *Id.*

<sup>168</sup> Kimberle Crenshaw, *supra* note 119.

combine social science perspectives to examine how cancel culture acts as counterspeech that regulates hate speech online.<sup>169</sup>

Some argue that cancel culture attacks a symptom of racism, the speech, and not actual systemic racism.<sup>170</sup> Racial realism holds that “racism is much more than a collection of unfavorable impressions of members of other groups.”<sup>171</sup> For example, using a racial epithet in a classroom is more than just the expression of a racist sentiment. It also has to do with the environment and comfortability the person who said the word has and the lack of power of another to object – even if it is a mistake. The response to the critique a student may have of that person who said the word also has to do with that power. The encouragement of the student to “get over it” or accept an apology without further repercussions for the person who violated a social norm is representative of that social order.<sup>172</sup>

Racial realism is what critical race theorists assume is in contrast with the idealist nature of the First Amendment normative approach. Regardless of what the First Amendment ideals state, realism decides who receives privileges and status.<sup>173</sup> In the speech context this may be represented in credibility or reach of the speaker based on their race and other socially

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<sup>169</sup> Delgado, Richard, and Jean Stefancic, Critical Race Theory, *supra* note 117 at 21.

<sup>170</sup> Gwen Bouvier, *Racist call-outs and cancel culture on Twitter: The limitations of the platform’s ability to define issues of social justice*, 38 Discourse, Context & Media 178 (2019) <https://www.sciencedirect.com/science/article/abs/pii/S2211695820300647> (“While those tweeting revel in and enjoy their shared moral position, actual endemic structural racism in society remains invisible, and they misrepresent, arguably, the key question that this racist outburst raises.”).

<sup>171</sup> *Id.*

<sup>172</sup> See Mari J. Matsuda. *Public Response to Racist Speech: Considering the Victim’s Story*. 87:8 MICH. L. REV., 2320, 2338 (Aug. 1989), <http://www.jstor.org/stable/1289306> (finding that the harm of hate speech also come from its tolerance of it).

<sup>173</sup> Critical Race Theory *supra* note 106 at 21.

constructed characteristics. According to Delgado and Stefancic, it is naive to think that the issues with the status quo could be solved through “thinking, mental categorization, attitude,” and most importantly “discourse.”<sup>174</sup>

Furthermore, Richard Delgado and Jean Stefancic, critical race theory scholars, proposed a solution for regulating hate speech that was very similar to how cancel culture operates in practice online. Their proposal stems from what they call confrontation theory, which assumes that racist speech must be confronted head on.<sup>175</sup> They argue for using three methods or steps to correct the behavior. The first is to denounce the group or individual publicly.<sup>176</sup> This can demonstrate to other users on the platform that disseminating hate through this medium brings consequences and can give pause to others who might be tempted to follow suit.<sup>177</sup> One aspect of cancel culture is mass public criticism of a behavior or speech.

The second activity is called group condemnation.<sup>178</sup> "With a small amount of encouragement, imaginative members of these groups could join in applying pressure to racist websites, broadcasters, and other purveyors of vitriol."<sup>179</sup> Another activity common in cancel culture includes efforts to get the targeted person or organization to apologize or acknowledge that the statement was in bad taste. The final method is economic sanctions.<sup>180</sup> Since most

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<sup>174</sup> *Id.*

<sup>175</sup> Richard Delgado & Jean Stefancic, *Hate Speech in Cyberspace*, 49 WAKE FOREST L. REV. 319, 28 (2014).

<sup>176</sup> *Id.*, at 329.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*, at 330.

individuals and groups zealously guard their personal fortunes, Delgado and Stefancic argue that approaches of this type may nudge individuals to “moderate their antisocial activity.”<sup>181</sup> It is true that some people who participate in cancel culture will call for the offender to be fired<sup>182</sup> or will try to convince others to stop purchasing their product or service.<sup>183</sup>

Delgado and Stefancic argue that public shaming might function as a deterrent for other groups that participate in hate speech to avoid speech that crosses a boundary. This thesis will rely on Delgado and Stefancic’s confrontation theory to evaluate the effectiveness of cancel culture as counterspeech.

## RESEARCH QUESTIONS

The goal of this thesis is to explore how cancel culture functions as counterspeech to regulate hate speech. This thesis will examine cancel culture by using a critical race theory lens and specifically Richard Delgado and Jean Stefancic’s confrontation theory which states that hate speech should be regulated by public condemnation, group condemnation, and economic sanctions.

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<sup>181</sup> *Id.*

<sup>182</sup> When a professor used a racist epithet in class when reading rap lyrics there were demands by students to fire the professor. Henry Kokkeler. *Professor under fire for quoting N-word in rap lyrics disappears from Stanford’s website*. (May 11, 2020). <https://www.thecollegefix.com/professor-under-fire-for-quoting-n-word-in-rap-lyrics-disappears-from-stanfords-website/>.

<sup>183</sup> For example, when people find out which political party a business donated to, there may be calls to boycott that business. Radash Robinson. *I’m happy to boycott Chick-fil-a but that doesn’t make Popeyes progressive*. The Guardian. (Nov. 8, 2019). <https://www.theguardian.com/commentisfree/2019/nov/08/chicken-sandwich-chick-fil-a-popeyes-politics-race>.

1. How do Twitter users use cancel culture as a form of counterspeech to regulate hate speech on Twitter?
  - a. How do users publicly denounce hate speech?
  - b. How do users use group condemnation?
  - c. How do users argue for economic sanctions?
2. How does the platform Twitter influence the prevalence of cancel culture as a form of counterspeech? Does Twitter as a platform help address the power imbalance of counterspeech by minorities mentioned by critical race theorists such as lack of agency and credibility as speakers and access to effective tools for counterspeech? How well does the platform allow for users to (1) publicly condemn others, (2) use group condemnation, (3) call for economic sanctions.

## **METHOD**

### ***Discourse Analysis***

Discourse analysis examines patterns of language across texts and considers the relationship between language and the cultural context in which it is used.<sup>184</sup> It examines how the use of language is influenced by relationships between participants as well as the effects the use of the language has upon social identities and relations.<sup>185</sup> It also considers how views of the world and identities are constructed through the use of discourse.<sup>186</sup> Discourse analysts

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<sup>184</sup> Brian Paltridge. *What is discourse analysis*. 10 Discourse analysis: An introduction. Bloomsbury. (2006).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

examine language in use.<sup>187</sup> The primary purpose of discourse analysis is to understand language and how is it meaningful to their users.<sup>188</sup>

In this case, three instances of cancel culture will be analyzed to answer the research questions posed here: (1) the discourse around JK Rowling's tweets about trans women; (2) the discourse around the singer SIA, and her decision to use a non-neurotypical actor in her film she produced and directed about a child with autism; and (3) the discourse on Twitter regarding a video that Jimmy Galligan, a Black student, uploaded of Mimi Groves which led to Mimi Groves acceptance being rescinded. For each incident, direct tweets to the original incident, replies to the original incident, and tweets about the incident will be collected. JK Rowling's Twitter threads will also be analyzed by using the search terms "jk rowling women" and "jk rowling trans women" and "jk rowling boycott" and "cancel jk rowling" "#jkrowlingisoverparty." For threads about SIA, the search terms "SIA music" "SIA boycott" and "cancel SIA" "#siaisoverparty" will be used. For threads about the high school students the search terms "Jimmy Galligan" and "Mimi Groves," were used. The tweets will be analyzed for their use of (1) public condemnation; (2) group condemnation; and (3) calls for economic sanctions.

### ***Critical Technocultural Discourse Analysis" (CTDA)***

The second research question will be addressed by using Critical Technocultural Discourse Analysis (CTDA). (CTDA) is an approach that offers a "holistic analysis of the interactions between technology, cultural ideology, and technology practice guided by a

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<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

conceptual framework.”<sup>189</sup> Cancel culture continues to occur on social media sites like Twitter. CTDA works from the premise that populations other than the dominant group do not fundamentally lack technological capabilities, even though they have frequently been excluded from the literature.<sup>190</sup> CTDA contributes to this research by providing an analysis of how the affordances of the technology contribute to the content and discourse present within.

CTDA assumes that the “dynamics of Black and White American racial ideology inflect the framing of the technology, the cultural discourses that shape our use of the technology, and the societal expectations about those technocultural practices.”<sup>191</sup> The approach frames the technological artifact as “text” to be examined with the texts of its users. In this case, the hosting site is Twitter, which, as a platform, has architecture that also mediates communication and meaning.<sup>192</sup> For example, Twitter “mediates discourse through brevity, ritual, performativity, and ephemerality, while social proximity and cultural referents encouraging conversational form.”<sup>193</sup>

Twitter will be analyzed as a platform for its ability to increase access and credibility for minorities engaging in counterspeech. The analysis will consider how well the platform allows for (1) public denunciation of hate speech; (2) group condemnation of hate speech; and (3)

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<sup>189</sup> Andre Brock, *Critical Technocultural Discourse Analysis*, 20:3, *New Media & Society*, 1012, 13. (2016) doi/10.1177/1461444816677532.

<sup>190</sup> See Catherine Night Steele, *Black Bloggers and Their Varied Publics: The Everyday Politics of Black Discourse Online*, 19:2 *Television and New Media* 112 (2017) doi/10.1177/1527476417709535.

<sup>191</sup> Brock, *supra* note 191.

<sup>192</sup> See *id.*

<sup>193</sup> The use of the “@” symbol to identify interlocutors, the ritualistic abbreviation of complex meaning into 140 characters, and the technosocial formation of a group of like-minded users. Brock, *supra* note 142 at 1025 footnote 12.

economic sanctions. The platform culture, terms of service, account policies, and reach by the tweets will be examined to answer this question.



## CHAPTER THREE – JK ROWLING

### Background on J.K. Rowling, her tweets and subsequent Cancellation

The first part of this chapter provides context on what J.K. Rowling said on Twitter and why her speech may be considered hate speech. The second part of this chapter summarizes how cancel culture impacted the discourse surrounding her speech. JK Rowling is the famous author of the popular *Harry Potter* fantasy series. The books have received several awards and have sold millions of copies internationally. There have been several derivative works based on the series such as a popular movie saga based on the book of the same name, a theme park, and parodies on YouTube.

Most of the criticism around J.K. Rowling stems from her posts on Twitter. One of her most notable controversies was when she retweeted an op-ed piece that quoted the phrase “people who menstruate” from Devex, a blog that describes itself as a platform for the global development community.<sup>194</sup> She tweeted “‘People who menstruate.’ I’m sure there used to be a

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<sup>194</sup> Doha Madani, JK Rowling accused of transphobia after mocking ‘people who menstruate’ headline, NBC News, (June 7, 2020) <https://www.nbcnews.com/feature/nbc-out/j-k-rowling-accused-transphobia-after-mocking-people-who-menstruate-n1227071>. See also, Abby Gardner, *Complete Breakdown of the J.K. Rowling Transgender-Comments Controversy*, Glamour, (Jan. 26 2021) <https://www.glamour.com/story/a-complete-breakdown-of-the-jk-rowling-transgender-comments-controversy>.

word for those people. Someone help me out. Wumben? Wimpund? Woomud?”<sup>195</sup> This initial tweet received a lot of backlash, but soon after, Rowling continued to discuss her opinions in more detail. She tweeted a further thread (a series of tweets linked to one another) stating, “If sex isn’t real, there’s no same-sex attraction. If sex isn’t real, the lived reality of women globally is erased. I know and love trans people but erasing the concept of sex removes the ability of many to meaningfully discuss their lives. It isn’t hate to speak the truth,” she tweeted. “The idea that women like me, who’ve been empathetic to trans people for decades, feeling kinship because they’re vulnerable in the same way as women—i.e., to male violence—‘hate’ trans people because they think sex is real and has lived consequences—is a nonsense.”<sup>196</sup>

Several actors from her Harry Potter film adaptation expressed that they did not agree with Rowling’s comments in their own set of tweets. Emma Watson, the actress who portrayed Hermione Granger, Daniel Radcliff, who was Harry Potter, and Rupert Grint, who played Ron Weasley, all tweeted following the incident stating, among other things, that “trans women were women.”<sup>197</sup> Even after being critiqued by the actors, Rowling returned to Twitter to express her concern over hormone therapy used by minors transitioning.<sup>198</sup> In July 2020 she tweeted, “Many health professionals are concerned that young people struggling with their mental health are being shunted towards hormones and surgery when this may not be in their best interests,” she

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<sup>195</sup> Abby Gardner, *Complete Breakdown of the J.K. Rowling Transgender-Comments Controversy*, Glamour, (Jan. 26 2021) <https://www.glamour.com/story/a-complete-breakdown-of-the-jk-rowling-transgender-comments-controversy>.

<sup>196</sup> *Id.* She continued “I respect every trans person’s right to live any way that feels authentic and comfortable to them. I’d march with you if you were discriminated against on the basis of being trans. At the same time, my life has been shaped by being female. I do not believe it’s hateful to say so.” *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

continued.<sup>199</sup> “Many, myself included, believe we are watching a new kind of conversion therapy for young gay people, who are being set on a lifelong path of medicalisation that may result in the loss of their fertility and/or full sexual function.”<sup>200</sup>

It was not the first time that Rowling received backlash for her tweets. In 2017, Rowling was called out for liking a tweet that linked to a transphobic Medium article.<sup>201</sup> She was later accused of transphobia after liking a tweet that referred to trans women as "men in dresses," although her spokesperson claimed at the time that Rowling had swiped the "like" button by accident.<sup>202</sup> Before her tweets about the ‘people who menstruate,’ she had also tweeted her support for Maya Forstater, a British researcher who lost her job at a nonprofit think tank following a series of tweets that were criticized as transphobic.<sup>203</sup> Lastly, her new crime thriller, “Troubled Blood,” published under her alias Robert Galbraith, centers on the disappearance of a woman thought to have been a victim of Dennis Creed, a cis male serial killer who dresses up as a woman to kill other women.<sup>204</sup> The novel is the fifth in a series of detective books, and it is not the first book in the series criticized for its transphobic elements.<sup>205</sup> She had previously been

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<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Doha Madani, JK Rowling accused of transphobia after mocking ‘people who menstruate’ headline, NBC News, (June 7, 2020) <https://www.nbcnews.com/feature/nbc-out/j-k-rowling-accused-transphobia-after-mocking-people-who-menstruate-n1227071>.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> Tracy Brown, *J.K. Rowling’s newest book criticized for a reportedly transphobic plot line*, LA Times, (Sept. 14 2020), <https://www.latimes.com/entertainment-arts/books/story/2020-09-14/jk-rowlings-troubled-blood-robert-galbraith-transphobic>.

<sup>205</sup> *Id.*

called out for her depiction of a trans woman in the second Cormoran Strike novel, “The Silkworm.”<sup>206</sup>

Due to all the controversy, J.K. Rowling wrote a longer piece on her blog to respond. The piece titled, *J.K. Rowling Writes about Her Reasons for Speaking out on Sex and Gender Issues*, gives five reasons for why she has issues with trans activism.<sup>207</sup> Firstly, Rowling seems to be concerned about how funds for charities focusing on women and children would be distributed if sex classes were changed to include trans men and women who identified as trans before they biologically transitioned.<sup>208</sup> For her second concern, she simply states she is “an ex-teacher and the founder of a children’s charity,” which gives her “an interest in both education and safeguarding.”<sup>209</sup> And because of that, “she has deep concerns about the effect the trans rights movement is having on both.”<sup>210</sup> Her third interest is in freedom of speech.<sup>211</sup> Fourth, Rowling is concerned about the young men and women who “de-transition,” citing that the number could be between 60%-90%.<sup>212</sup>

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<sup>206</sup> *Id.*

<sup>207</sup> J.K. Rowling, *J.K. Rowling Writes about Her Reasons for Speaking out on Sex and Gender Issues*, J.K. Rowling, (June 10, 2020) <https://www.jkrowling.com/opinions/j-k-rowling-writes-about-her-reasons-for-speaking-out-on-sex-and-gender-issues/> (“Well, I’ve got five reasons for being worried about the new trans activism, and deciding I need to speak up.”)

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* (“The fourth is where things start to get truly personal. I’m concerned about the huge explosion in young women wishing to transition and also about the increasing numbers who seem to be detransitioning (returning to their original sex), because they regret taking steps that have, in some cases, altered their bodies irrevocably, and taken away their fertility. Some say they decided to transition after realising they were same-sex attracted, and that transitioning was partly driven by homophobia, either in society or in their families”).

Rowling explained the final reason stems from her experience as a domestic abuse survivor.<sup>213</sup> She writes: “I do not want to make natal girls and women less safe. When you throw open the doors of bathrooms and changing rooms to any man who believes or feels he’s a woman – and, as I’ve said, gender confirmation certificates may now be granted without any need for surgery or hormones – then you open the door to any and all men who wish to come inside. That is the simple truth.”<sup>214</sup> While her comments were not originally posted on Twitter, they did spark discussion on the platform, and they provided more context than her original tweets.

Several experts on gender issues have described Rowling’s comments as transphobic and offensive to the trans community. One issue that some have noted is that the information on “de-transitioning” is sparse, and what is available appears to indicate it is an infrequent occurrence.<sup>215</sup> Another issue is the concern about when minors decide to transition. There is

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<sup>213</sup> *Id.* (“I managed to escape my first violent marriage with some difficulty, but I’m now married to a truly good and principled man, safe and secure in ways I never in a million years expected to be. However, the scars left by violence and sexual assault don’t disappear, no matter how loved you are, and no matter how much money you’ve made. My perennial jumpiness is a family joke – and even I know it’s funny – but I pray my daughters never have the same reasons I do for hating sudden loud noises, or finding people behind me when I haven’t heard them approaching.”).

<sup>214</sup> *Id.*

<sup>215</sup> Kallahan Roseblatt, *J.K. Rowling doubles down in what some critics call a 'transphobic manifesto'*, NBC News, (June 11, 2020) <https://www.nbcnews.com/feature/nbc-out/j-k-rowling-doubles-down-what-some-critics-call-transphobic-n1229351>. “In a 2015 survey of nearly 28,000 people conducted by the U.S.-based National Center for Transgender Equality, only 8 percent of respondents reported detransitioning, and 62 percent of those people said they only detransitioned temporarily. The most common reason for detransitioning, according to the survey, was pressure from a parent, while only 0.4 percent of respondents said they detransitioned after realizing transitioning wasn’t right for them. And the results of a 50-year survey published in 2010 of a cohort of 767 transgender people in Sweden found that about 2 percent of participants expressed regret after undergoing gender-affirming surgery.” *Id.* According to a 2018 study of a cohort of transgender young adults at the largest gender-identity clinic in the Netherlands, 1.9 percent of adolescents who started puberty suppressants did not go on to pursue hormone therapy, typically the next step in the transition process. Liam Knox, *Media's 'detransition' narrative is fueling misconceptions, trans advocates say*, NBC News, (Dec 19, 2019) <https://www.nbcnews.com/feature/nbc-out/media-s-detransition-narrative-fueling-misconceptions-trans-advocates-say-n1102686>.

some misconception over what steps occur at what point in a minor's life when they decide to transition. "For a child who has not yet reached puberty, trans health experts recommend seeking mental health support, because even prior to disclosing a gender identity that is different than the one they were assigned at birth, trans youth can experience symptoms including depression, social isolation and suicidal ideation. While medical guidelines advise that prepubescent children do not undergo hormone interventions, they state that allowing trans youth to "socially transition," which can include taking on a new name and wearing a different style of clothing, can greatly benefit a child."<sup>216</sup> Once the young person has reached puberty, they can start taking puberty blockers which are a "low-risk way to provide care for gender dysphoric youth."<sup>217</sup>

Misinformed opinions like JK Rowling's can have a real effect. Bills have been proposed in Texas, Georgia, and Kentucky that would ban access to trans health care for minors, including puberty blockers and hormone replacement therapy.<sup>218</sup> Furthermore comments alluding to transitioning as a phase that young people grow out of stems from "unjust historical" medical categorization of homosexuality as a mental illness.<sup>219</sup> The World Health Organization recently stopped classifying being transgender as a mental disorder in 2019.<sup>220</sup>

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<sup>216</sup> Liam Knox, *Media's 'detransition' narrative is fueling misconceptions, trans advocates say*, NBC News, (Dec 19, 2019) <https://www.nbcnews.com/feature/nbc-out/media-s-detransition-narrative-fueling-misconceptions-trans-advocates-say-n1102686>.

<sup>217</sup> *Id.* "Puberty blockers put puberty on hold so that adolescents have more time to decide what they want to do next. This is important because, while pubertal blockade is reversible, puberty itself is not," he said. "It's much more common to regret not getting puberty blockers than it is to regret getting puberty blockers." *Id.* (quoting Dr. Jack Turban, a resident physician in psychiatry at Massachusetts General Hospital).

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

Lastly, Rowling, in several ways, conveys a fear that trans people may transition to commit violent acts on women and children. Although women's access to safe and comfortable toilets is an important and valid issue, Charlotte Jones and Jenn Slater have demonstrated through their empirical research that this talking point is trans-exclusionary and tends to negate, deny and perpetuate trans people's own vulnerabilities to violence using restrooms.<sup>221</sup> They conclude that these views on bathrooms "are ideological: trans people's increased visibility is interpreted as dangerous because it holds the possibility of changing entrenched binary understandings of sex and gender. Thus, the fight is not so much 'about toilets' but about the contested boundaries of womanhood, tightening the reins on gender, and making trans lives impossible."<sup>222</sup> There is a tension to maintain the status quo around gender under the guise of safety at the expense of trans inclusion and an ignorance that bathroom inclusivity cannot be safe.<sup>223</sup>

### **Discourse Analysis on the response to Rowling's Tweets on Twitter**

The users condemning Rowling's speech did identify JK Rowling's speech as being transphobic. This reaction to JK Rowling's speech was largely because of her use of exclusionary terms. Many users wanted trans women to be included in the discussion about women even if cis gendered women and trans women may have differences. The post declaring

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<sup>221</sup> Charlotte Jones and Jenn Slate, *The toilet debate: Stalling trans possibilities and defending 'women's protected spaces*, 68(4) *The Sociological Review Monographs* 834, 47 (2020) <https://journals.sagepub.com/doi/pdf/10.1177/0038026120934697>.

<sup>222</sup> *Id.*

<sup>223</sup> This is not the first time protecting "womanhood" has been used to be exclusionary. In this case it is transphobic, but white womanhood has been used to argue racist views as well. For example, Tara Nicole Kowasic explains in her thesis on the movie *The Clansmen* and *Birth of a Nation* that a deep-seated desire to protect and control white womanhood—the most important component of the white, Anglo, Protestant majority means to augment race and power while maintaining and bolstering the traditional social order. Tara Nicole Kowasic, *Race Power, and White Womanhood: The Obsessions of Tom Watson and Thomas Dixon Jr.*, Virginia Common Wealth, 1 (2013) <https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=4027&context=etd>.

that *trans women are women* seems to try to shut down the fact that trans women should be left out of discussions that affect cis gendered women. Even if the differences matter those difference should allow us to be more inclusive and consider how, for example, bathroom safety affects these groups as well. This was a common theme in many of the messages. The way users were defining the harm and expressing the harm was interestingly like how researchers Charlotte Jones and Jenn Slate would describe the harm.

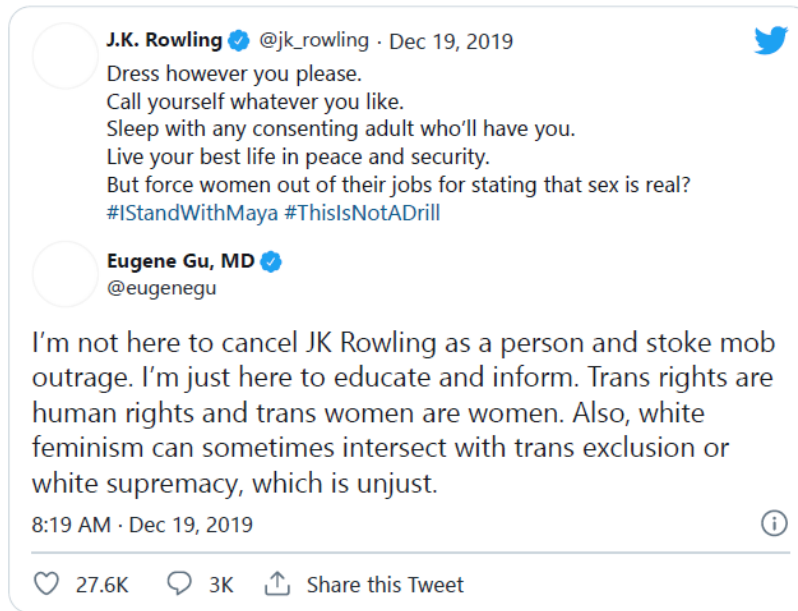
Most of the consequences appeared to be calling for sanctions to JK Rowling's earnings stemming from her Harry Potter fantasy books. The Harry Potter books were like a symbol for JK Rowling's success. If users wanted to sanction JK Rowling they could do so through her books. Even though JK Rowling has other works, and even some that have been criticized as being transphobic for their content, the Harry Potter series seemed to take most of the focus.

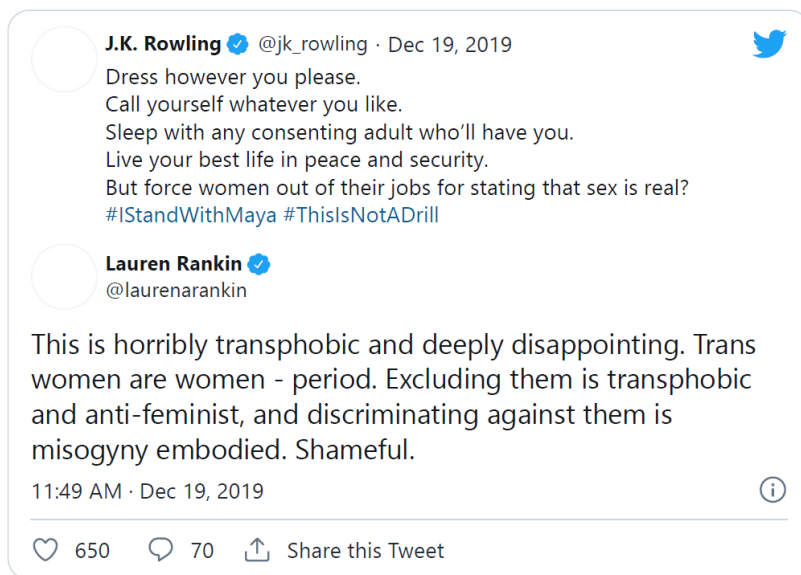
Below are examples of public condemnation, group, condemnation, and economic sanctions and where and how they occurred on the platform.

### **Public condemnation**

Most of the discourse about JK Rowling's tweets occurred underneath JK Rowling's tweets as replies to several tweets she had made regarding trans women and women's rights. Since JK Rowling is a public figure, replies and comments to her tweets received amplified views. This also means that other users could reply to other users directly under her tweet. Most of the communication was in direct response to JK Rowling's own tweets. This made the tweets easier to see and find because everything was in relation to her own words, which often go viral even if mundane. Because the initial tweet attracted a lot of views, some of the comments also received a lot of views as well.







Some of the critical replies to RJK owling went viral. The likes to these replies show support for the opinion in the tweet. The replies left room for users to explain how JK Rowling's comments could perpetuate violence within the trans community. Moreover, some comments explained to other users why her statements could be transphobic. For example:





Some decided to side with JK Rowling's argument in the debate. This prompted the hashtags #Istandwithjkrowling or #ILoveJKRowling. Dissenters could also reply publicly to these tweets by searching the hashtag or using the hashtag to reach these supporters.



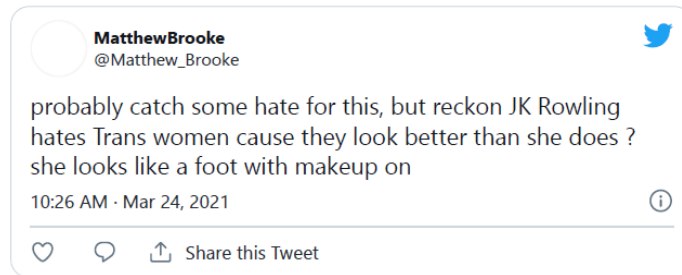
## Group condemnation

The most common response to JK Rowling's words were that trans women *were* women. This phrase was uttered in numerous responses with little else. The response acknowledges the exclusionary attitude that can stem from JK Rowling and her tweets about trans women.



It is also important to note that a lot of the criticism towards JK Rowling was also wrapped in sexist comments or slurs.





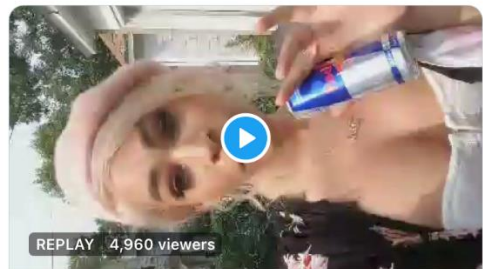
## Economic sanctions

There were calls for economic sanctions of JK Rowling's work in response to the tweets. One of the more unique ways two users protested JK Rowling's comments was by posting videos of burning and removing her Harry Potter books from his or her bookshelf. One video showed a woman sitting next to a bonfire in her backyard while she presumably burned the Harry Potter collection. Another video captured a user removing the Harry Potter book collection from his bookcase and replacing it with another collection of books instead. These videos signaled that readers who potentially once loved the series were having a change of heart because of her opinions on transgender issues.



Rest in flames, Harry Potter.

#noTERFs



Persephiroth: Her Tits are Full of Secrets @Persep...  
Rest in flames, Harry Potter.#noTERFs

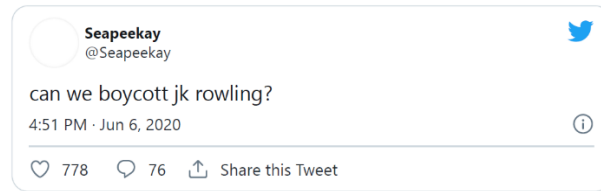
11:34 AM · 9/15/20 · Twitter for Android

28 Retweets 11 Quote Tweets 304 Likes



Moreover, there were statements made on Twitter to boycott JK Rowling's work and derivative works.

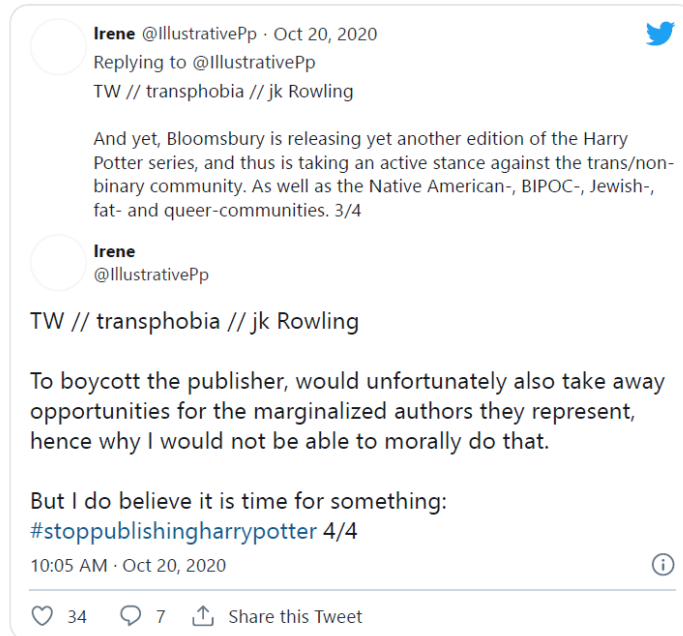




I mean I'll say it: JK Rowling is transphobic and you should boycott her work.



Users expressed concern about JK Rowling's ability to profit off transgender fears particularly because one of her books features a male serial killer who dresses up as a woman to prey on the opposite sex.



Still, there were tweets calling into question whether there should be punishment at all for her statements. Some users just wanted an acknowledgement from JK Rowling that she was wrong but also from other users who follow her work.



**Mangy Jay** @magi\_jay · Mar 19, 2021

Replying to @magi\_jay

I'm a white cishet woman & I'm not going to comment on how POC or LGBTQ people *\*should\** approach forgiveness. I will, however, comment on my observations about what actually occurs: many in marginalized groups appreciate a recognition of wrongdoing & a commitment to change.

**Mangy Jay** @magi\_jay

If JK rowling were to retract her bigoted statements about trans women & show a commitment to trans justice, I am sure there would be a diversity of opinions among trans people about how to proceed. It wouldn't be just one strain of "cancel her forever." There would be a convo.

3:16 PM · Mar 19, 2021



 91  6  Share this Tweet



**Ruminating Thot** @dominicsjr


Have I decided what I'm going to do about the Wizarding World game yet? No. I know a few things.


JK Rowling will not be affected by a boycott.

However, hundreds of other people worked on this game that aren't her.

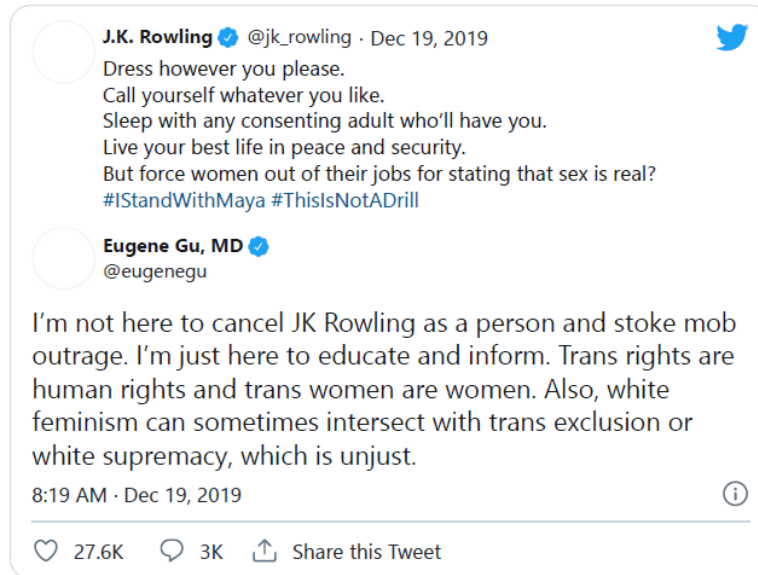
Being an ally isn't a purity test. It's a nuanced situation.

7:15 AM · Sep 17, 2020

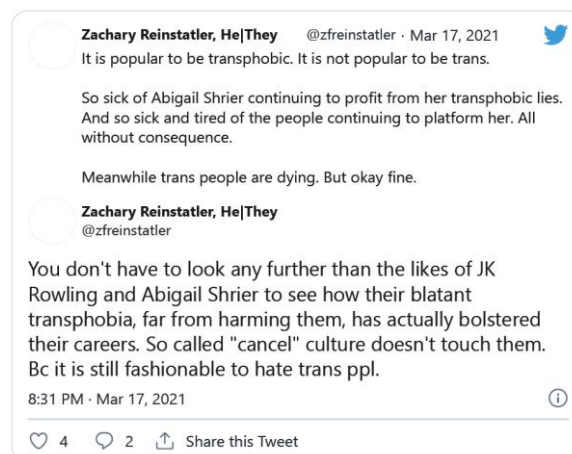


 51  14  Share this Tweet





Some questioned whether the boycotts of JK Rowling work were working. There was some frustration among users that JK Rowling will maintain her success despite her posts.



## Summary

To summarize, the response to Rowling's speech was largely condemnation for her tweets, although she did receive some support from some users for sticking up for women's rights. The type of condemnation was varied with some publicly stating arguments similar to researchers Jones and Slater that JK Rowling's comments are trans exclusionary and create division between marginalized groups. However, people did publicly support JK Rowling as well by creating the hashtag #IstandwithJKRowling and commenting that her wealth would insulate her from cancel culture.

The public condemnation of JK Rowling shows that some supporters and dissenters are communicating about this topic. Moreover, many challenging her tweets are using the same arguments from experts on why her speech is transphobic and harmful. By responding directly under JK Rowling's initial tweets, this discourse is amplified because she is a public figure, and the publicity of her commentary is tied to her following.

The group condemnation essentially followed a similar pattern to the response by cast members in the Harry Potter movie series – that trans women *were* women. This shows the overall group message that people want to convey is that trans women should not be excluded in the conversations about women and that the difference between the trans experience and the cis gendered women experience matters but not in a way that should exclude trans women. While most messages were conveyed without slurs, a few did use sexist words such as “bitch.” JK Rowling's speech is transphobic but some of the messages used hate speech as well to respond. There is a line where cancel culture crosses a boundary. An example of this is when users craft messages with hate speech to respond to hate speech. Because JK Rowling is a woman, how

people condemn her may bleed into its own hate speech and this could be true for how people respond to other marginalized groups that have their speech challenged by cancel culture.

A fault of group condemnation is that when a protected class is being condemned the group may use hate speech against that protected class to make their point. The sexism and focus on JK Rowling's gender and appearance when challenging her transphobia is an example.

Some users visually expressed economic sanctions. Because JK Rowling produces tangible items people were able to express their protest visually. For example, one user filmed herself burning the series. Several others simply tweeted boycott JK Rowling or her derivative works. The collective action by these users relates to boycott speech. Protesters would call for others to boycott businesses to punish them economically for their cause. Here are similar calls for economic sanctions – albeit through tweets. However, the tweets and the visual demonstrations still have power when they are amassed at a large quantity. One tweet, for example, received over 700 likes when it simply said, “can we cancel JK Rowling?”

Interestingly the public condemnation that contained explanations was separate from the calls for economic sanctions in many instances in the JK Rowling case study. There were calls to boycott JK Rowling's work without an explanation why. This could create some curiosity about why people were calling for sanctions leading to users doing more research, but this cannot be confirmed by this study. It also shows that some people who have identified JK Rowling's tweets as being transphobic are not calling for economic sanctions directly. The impact of separating these may make condemnation weaker because it identifies a problem without an action. Having the action attached might make the condemnation stronger according to condemnation theory.

## CHAPTER FOUR – Sia and “Music”

### Background on Sia, her tweets and subsequent Cancellation

The first part of this chapter provides context around the controversial movie Sia produced and her subsequent comments on Twitter and why her speech may be considered hate speech. The second part of this chapter summarizes how cancel culture impacted the discourse surrounding her speech. Sia is an Australian singer, songwriter, record producer, and director. She has written hit songs for other artists, such as "Titanium" for David Guetta, "Diamonds" for Rihanna, and "Wild Ones" with Flo Rida.<sup>224</sup> In 2014, Sia released her sixth studio album, *1000 Forms of Fear*, which debuted at No 1 in the U.S. Billboard 200 and generated the top-ten single, "Chandelier," and a trilogy of music videos starring child dancer and television star of *Dance Moms* Maddie Ziegler.<sup>225</sup> Sia and Ziegler continued to collaborate on several music videos and performances after Sia messaged her to portray Sia in the music video for “Chandelier.”<sup>226</sup>

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<sup>224</sup> Sia Biography, IMDb, <https://www.imdb.com/name/nm2397981/bio>.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

The musical-drama movie “MUSIC” is Sia’s first directional debut.<sup>227</sup> “MUSIC” is about a character with the same name who filters an overwhelming world through her headphones and her older half-sister that mostly looks out for her who is coping with a drug addiction.<sup>228</sup> Sia explained in a tweet responding to the initial controversy after she published the movie trailer to her Twitter account that the story was "completely" inspired by her "neuro atypical [sic] friend" who "found it too stressful being non-verbal, and I made this movie with nothing but love for him and his mother.”<sup>229</sup>

Sia’s use of Maddie Ziegler in a movie role where Ziegler portrayed a nonverbal autistic girl sparked backlash after the trailer was released. One criticism was that Ziegler is neurotypical, and many in the autistic community took issue with the dancer portraying a nonverbal autistic teenager.<sup>230</sup> The shortsighted choice to choose Ziegler was likely due to their previous long relationship working on music videos together. “MUSIC” was a musical drama so Sia likely believed it was a perfect fit. On Twitter Sia stated, “I can’t do a project without her [Ziegler],” and she insisted on Australian TV show *The Project*. “I don’t want to. I wouldn’t make art if it

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<sup>227</sup> David Fear, *What is Going On in Sia’s “Music”?*, Rolling Stone, Dec. 12 2021 <https://www.rollingstone.com/movies/movie-features/sia-music-movie-review-controversy-1125125/>.

<sup>228</sup> *Id.*

<sup>229</sup> Joey Nolfi, *Sia say Music movie will include waring label, cuts controversial restraint scences*, Entertainment, (Feb. 04 2021) <https://ew.com/movies/sia-music-controversy-deletes-twitter/>.

<sup>230</sup> Elyse Wanshel, *Sia Lashes Out At Autism Community Over Criticism Of Her Upcoming Movie*, Huffington Post, (Nov. 25, 2020) [https://www.huffpost.com/entry/sia-music-maddie-ziegler-autism\\_n\\_5fbc20d3c5b66bb88c60a4e3](https://www.huffpost.com/entry/sia-music-maddie-ziegler-autism_n_5fbc20d3c5b66bb88c60a4e3).

didn't include her [Ziegler].”<sup>231</sup> People were upset with the continuing trend of non-disabled actors being cast in leading roles when the character has a disability.<sup>232</sup>

Sia responded to the backlash with several tweets. When one Twitter user asked Sia why she cast a non-autistic actor for the lead, she stated: “I cast thirteen neuro atypical people, three trans folk, and not as fucking prostitutes or drug addicts, but as doctors, nurses and singers. Fucking sad nobody’s even seen the dang movie. My heart has always been in the right place.”<sup>233</sup> Sia told another Twitter user that she felt that casting an autistic person with her character’s “level of functioning” was “cruel, not kind, so she “made the executive decision that we would do our best to lovingly represent the community.”<sup>234</sup> Sia also told an autistic actor that “maybe you’re just a bad actor” when the actor tweeted that her reasons for casting a neurotypical actor to play an autistic teen were merely “excuses.”<sup>235</sup>

Apart from the controversy over the choice of Ziegler for the role, there was also backlash against Sia for her choice to partner with the organization Autism Speaks to promote the film.<sup>236</sup> People have criticized the organization for claiming to “speak” for autistic individuals while

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<sup>231</sup> Ann Lee, *Maddie Ziegler: 'I knew that people were going to love Music or hate it'*, Independent (Feb. 11 2021) <https://www.independent.co.uk/arts-entertainment/films/features/maddie-ziegler-interview-sia-music-b1800929.html>.

<sup>232</sup> Kim Renfro, *Sia is lashing out on Twitter after the trailer for her new movie caused fans with disabilities to cry foul*, Insider (Nov. 20 2020) <https://www.insider.com/sia-music-movie-autism-criticism-backlash-response-twitter-2020-11>.

<sup>233</sup> *Id.* (quoting Sia).

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *The Controversy Over Sia's Autism Movie Music, Explained*, CBR, (Nov. 22 2020) <https://www.cbr.com/sia-music-autism-movie-controversy/>.

lacking in autistic leadership.<sup>237</sup> Autism Speaks has also received criticism for its recently abandoned mission to find a “cure” for autism.<sup>238</sup> Lastly, Sia was critiqued for using the term “special abilities” in the film to describe the character’s autism.<sup>239</sup>

After receiving two nominations for the Golden Globes award, she promptly apologized for the depiction in the film. In a succession of now-unavailable tweets, the singer wrote that she has “been listening” to the criticism surrounding the film’s portrayal of a nonverbal person with autism.<sup>240</sup> Also, the singer announced that a warning label would appear at the beginning of the film, specifically about scenes depicting physical restraint.<sup>241</sup> The label read “MUSIC in no way condones or recommends the use of restraint on autistic people. There are autistic occupational therapists that specialize in sensory processing who can be consulted to explain safe ways to provide proprioceptive, deep-pressure feedback to help w[ith] meltdown safety.”<sup>242</sup> After apologizing, she deactivated her Twitter account, which was reactivated two days later.<sup>243</sup>

Sia’s movie and subsequent comment could be considered ableist for many reasons. Access Living defines ableism as “the discrimination of and social prejudice against people with

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<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> Variety, *Sia apologizes for depiction of autism in movie, adds warning label*, Variety, (Feb. 4 2021), <https://www.today.com/popculture/sia-apologizes-depiction-autism-movie-music-t207974>.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> Paul Bois, *Sia Deletes Twitter Account Amid Woke Backlash Over Her Movie’s Autistic Character*, Daily Wire, (Feb. 5 2021) ://www.dailywire.com/news/sia-deletes-twitter-account-amid-woke-backlash-over-her-movies-autistic-character.



disabilities based on the belief that typical abilities are superior.”<sup>244</sup> Ableism is rooted in the assumption that disabled people require ‘fixing’ and defines people by their disability. The entertainment industry has struggled with the authentic representation of people with disabilities. In 2016, only 2.7% of characters in the 100 highest-earning movies were disabled.<sup>245</sup> The childlike nature of Music contributes to the overall stereotype that autism is a disability of childhood.<sup>246</sup> A study in 2011 found that characters depicted as autistic were children in 90% of fictional books and 68% of narrative films and television programs. This depiction can be a “barrier to the dignity and well-being of autistic people of all ages.”<sup>247</sup>

Then there is the issue with how autism was depicted in the movie. Mainstream films fail to illustrate that autism is a spectrum disorder because they show minimal range in characters’ behaviors, mannerisms, and intellectual levels.<sup>248</sup> “MUSIC” falls into what Alexandria Prochnow notes in their research as the magical/savant trope for autistic characters that is used in film and television.<sup>249</sup> Prochnow describes the trope as having supernatural abilities that present the character as being “almost other-worldly” that “elevates” the character from having a diagnosis

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<sup>244</sup> *Id.*

<sup>245</sup> Elyse Wanshel, *supra*, note 218.

<sup>246</sup> Jennifer L. Stevenson, Bev Harp, and Morton Ann Gernsbacher, *Infantilizing Autism*, 31 *Disabilities Studies Quarterly* (2011) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4266457/>.

<sup>247</sup> *Id.*

<sup>248</sup> Alexandria Prochnow, *An Analysis of Autism Through Media Representation*, 71:2 *ETC: A Review of General Semantics* 133, 6 (Apr. 2017) [https://www.jstor.org/stable/24761922?seq=5#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/24761922?seq=5#metadata_info_tab_contents).

<sup>249</sup> See *id.*, at 137.

that is presented as something that affects them negatively and transforms it into something that makes them special or more interesting than the average person.<sup>250</sup>

The character Music fits that trope because Music's mind is depicted as a magical world by the several colorful dance numbers in the film to show how she sees the world around her.<sup>251</sup> This trope tends to be inaccurate of the realities of autistic persons and avoids interesting and valuable conversations about people in neuro – atypical communities. Sia even used the term special abilities when describing her motivations for the film. According to the Disability Language Style Guide, the word “special” in relationship to those with disabilities is now widely considered offensive because it euphemistically stigmatizes that which is different.<sup>252</sup>

Secondly Sia's movie may be considered problematic for many in the autism community who see their diagnosis as a source of pride. For many decades, autism was viewed as a biomedical condition, highlighting deficits in social interaction and communication.<sup>253</sup> This view was challenged within the autistic community. Some members in the autistic community have reclaimed the term as not a disease or a disorder but something that is akin to hair or skin

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<sup>250</sup> *Id.*

<sup>251</sup> *Id. at 147.*

<sup>252</sup> *Id.*

<sup>253</sup> Nancy Bagatell, *From Cure to Community: Transforming Notions of Autism*, 38:1 *Journal of the Society for Psychological Anthropology* 33, (Mar. 2010) <https://doi.org/10.1111/j.1548-1352.2009.01080.x>.

color.<sup>254</sup> Autism to them is not something that they have, like cancer, for example, but something that is intrinsic to who they are.<sup>255</sup>

### **Discourse Analysis on the response to Sia's Tweets on Twitter**

Users in the Sia case study identified Sia's speech and movie as being ableist and discriminatory. The main reasons why users considered the speech to be ableist were because of the characterization of the autistic character, the scene from the movie using restraints, and the statement by Sia that another user who is an autistic actor did not get roles because he was not good enough and not because of ableism and discrimination. Many users honed in on the offensive depiction of autistic people in the movie and the use of the #actuallyautistic hashtag demonstrated that the film was particularly perceived as offensive by the autistic community. The movie may have been considered so offensive to this community and others that users often began messages with a trigger warning before typing the content of the tweets.

Users either identified themselves as being autistic in the tweet or by labeling the tweet with a hashtag that identified themselves in the community. The users wanted the audience to know that they were apart of the autistic community. This has the effect of signaling to the audience that they can determine and should determine what is offensive to the community and how the community should be represented. Below are examples of public condemnation, group, condemnation, and economic sanctions and where and how they occurred on the platform.

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<sup>254</sup> Monique Botha, Bridget Dibb, and David M. Frost, *"Autism is me": an investigation of how autistic individuals make sense of autism and stigma*, Disability and Society <https://www.tandfonline.com/doi/epub/10.1080/09687599.2020.1822782?needAccess=true>.

<sup>255</sup> *Id.*

## Public condemnation

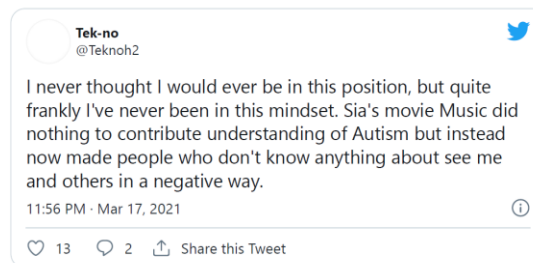
Out of the three case studies in this thesis, this study contained the most embedded videos from other platforms. Many videos were shared from Tik Tok and YouTube. Each video was used to explain visually why the movie was offensive. Users were able to share content from different mediums to further explain the reasoning behind boycotting the film.



The embedded content can be more digestible and easier to use for some users because it is in a more visual medium. Embedding the content also increases the views and makes the condemnation cross platform which can make it more accessible and more public.

Secondly people were able to explain concisely on Twitter why they were boycotting the film. The main reasons were that the performance by the lead character was stereotypical and offensive and that a scene showing the lead with autism being restrained was violent and

physically hurtful for the autistic community. There was also criticism for Sia partnering with the organization Autism Speaks to promote the film.



Users also used threads to explain why Sia's portrayal and response was hurtful. Threads are a sequence of comments grouped together by one person usually to explain a certain topic or event in depth. See below for a thread by a user explaining in detail all the problems with the movie broken down by scene. The thread also received over twenty thousand likes per tweet.



**The Autisticats**  
@autisticats

**Here's a still shot** of Maddie Ziegler's face at the beginning of that opening scene.

I don't think I need to explain what's wrong here, but I'm going to anyway.



2:20 PM · 2/12/21 · Twitter for iPhone

**The Autisticats** @autisticats · Feb 12, 2021

Replying to @autisticats

This performance is a caricature of autistic body language.

It's unsettling, and insincere.

And it is deeply reminiscent of the exaggerated mannerisms non-autistic people often employ when bullying autistic & developmentally disabled people for the ways we move.

**The Autisticats**  
@autisticats

There is absolutely nothing wrong with the ways autistic people move, or the ways we make facial expressions.

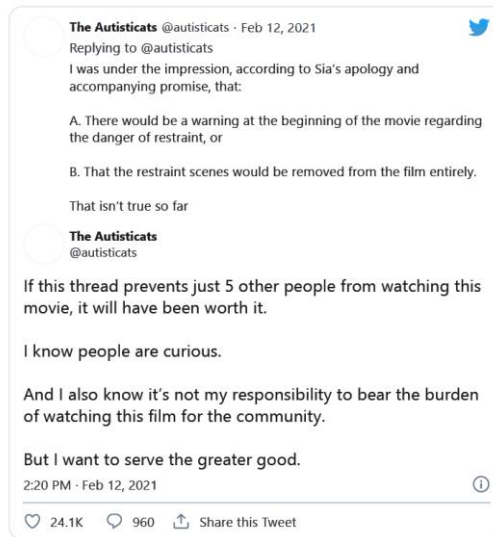
Some of us roll our eyes and put our teeth over our lips as a stim or just because it's comfortable.

But we do those things naturally. Maddie Ziegler does not.

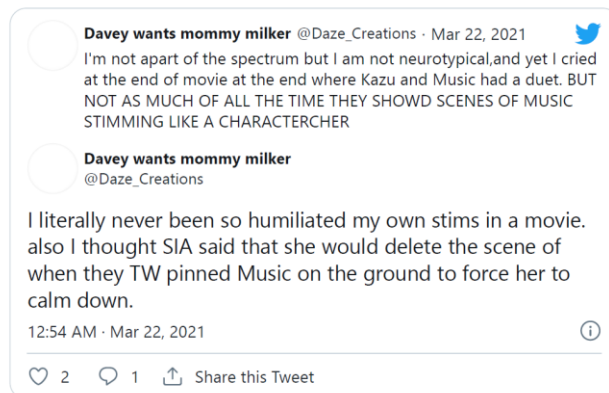
2:20 PM · Feb 12, 2021

30.4K 1.5K Share this Tweet





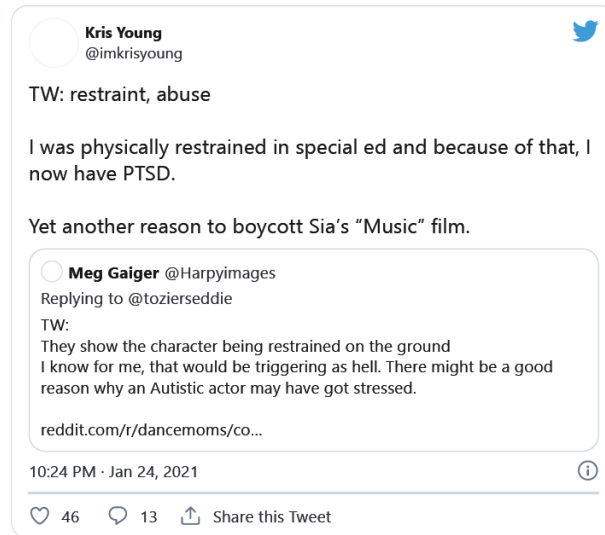
Threads were also used to demonstrate personal experiences of people living with autism and how the film was offensive to them.



Interestingly some of the tweets in the case study contained the use of the word “TW” which means Trigger Warning. A trigger warning is used as a signal to others that the content may be unpleasant to view. For example, the words “TW/ableism” was used before messages in several tweets. In the case study the messages related to commentary about hate speech. Even though Twitter provides a warning for unpleasant content, users were self-identifying speech that could be considered hate speech. Using these trigger warnings as a signal shows that users are

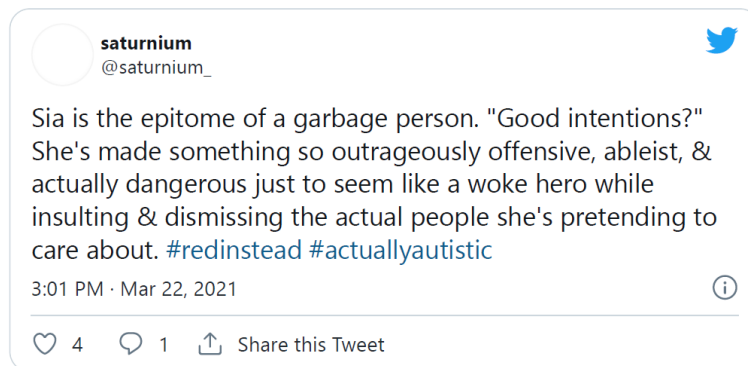
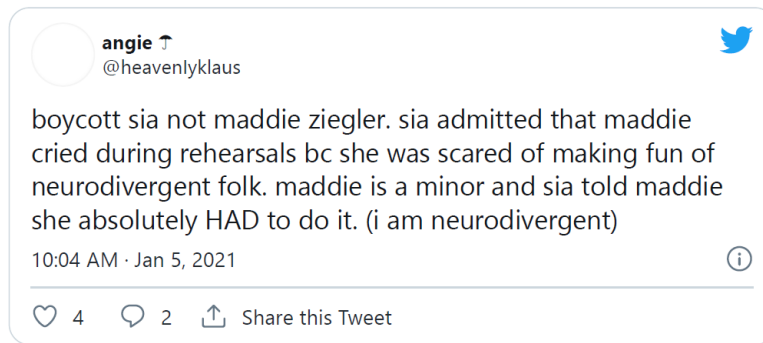


concerned about the audience and are providing an option for users to continue reading even if the message overall is attacking the hateful speech. The trigger warning shows a consideration for others that even viewing content that is in response to hate speech could still be harmful to some.



## Group condemnation

One of the revelations of looking through these tweets was the discovery of a previously unknown hashtag that allowed persons with autism to identify themselves when they tweeted about Sia or the movie. The search of the tweets about Sia and the movie led to the “#actuallyautistic” hashtag. By using this hashtag people with autism were able to explain their disdain and issues with Sia’s portrayal of autism in the movie and her response to the backlash. The hashtag also made these opinions easily searchable for others. If you were wondering why the movie was controversial to this community, this hashtag would be a good resource for others to educate themselves.

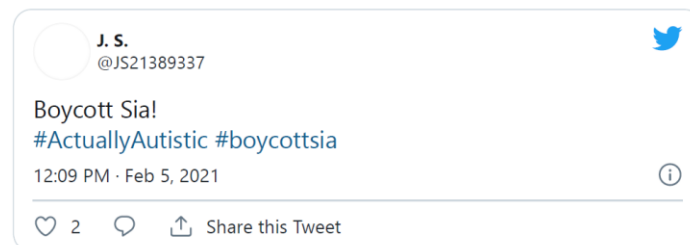


## Economic sanctions

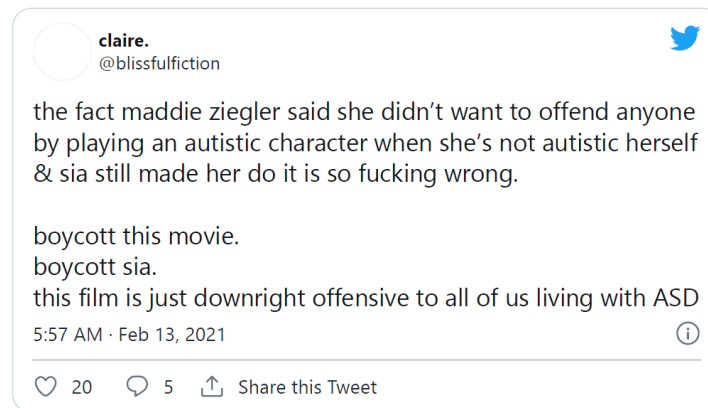
In terms of economic sanctions, users linked to petitions to boycott the movie on streaming services and in movie theaters. One user linked an online petition embed in their tweets. One petition gained over 65,000 signatures.<sup>256</sup>



Another example of economic sanctions were the clear calls for boycotts of the film, the studio that produced the film, the Golden Globes that nominated the film and of the artist Sia and her music.



<sup>256</sup> Ella Kemp, *Petition to ban Sia's film 'Music' reaches 65,000 signatures*, NME (Feb. 18 2021) [https://www.nme.com/en\\_asia/news/film/petition-to-ban-sia-film-music-reaches-60000-signatures-2883968#:~:text=A%20petition%20launched%20to%20rescind,harmful%20stereotypes%20of%20autistic%20people%E2%80%9D](https://www.nme.com/en_asia/news/film/petition-to-ban-sia-film-music-reaches-60000-signatures-2883968#:~:text=A%20petition%20launched%20to%20rescind,harmful%20stereotypes%20of%20autistic%20people%E2%80%9D).



While there were blatant calls to boycott the film, there was also an effort by some users to simply state how the film made them feel and how Sia’s reaction to that feeling caused them to be disappointed. Some tweets asked that Sia not be “canceled” but that neurotypical communities support the autistic community and boycott the film.



## Summary

First this section will summarize the findings in the response to Sia's movie and tweets. The public condemnation by users on Twitter mostly consisted of threads, embedded videos from other platforms, and tweets with trigger warnings identifying the movie and Sia's comments as ableist. The different methods of public condemnation demonstrate how users tried to explain and in depth, why Sia's movie and speech was ableist or harmful (Twitter is known for concise messages that are under 280 characters). The embedded videos from Tik Tok and YouTube explained in detail and in a different medium why the speech was harmful. Threads were also used to do the same. One thread (a sequence of comments grouped together by one person) discussed the movie scene by scene and explained why each was offensive to the autistic

community. The user made similar arguments by researchers that the exaggerated mannerisms by Music in the movie were offensive and mimicked bullying that the user experienced.

Trigger warnings were employed in many of the tweets collected. Users noted that Sia did not follow through with her promise to place a warning at the beginning of the film and remove the controversial restraint scene. Trigger warnings at the beginning of the tweets demonstrated that these users may be critical of their own words and the effect of them on the audience where Sia was not. The trigger warnings also publicly label what Sia is doing as “ableist.” This is helpful because it not only shows some empathy for audience members who may want to avoid the content but the label itself condemns the speech and denotes the speech as hate speech.

The most notable aspect of the group condemnation findings was that users used the hashtag “#actuallyautistic” when canceling the film. The hashtag was employed as a community to share how the film was offensive to members who identified themselves as autistic. The effect created a central location within the application for members of the autistic community to post their experiences and, even more importantly, a place where people from outside the community could find information about these experiences and understand why the film was hurtful to the community.

The economic sanctions here were like the sanctions in JK Rowling’s case study. There were simple posts to “boycott” the movie and some of Sia’s other works such as her music. However, what made this case unique is that a user linked tweets to a petition for the movie. The petition to boycott the movie received over 65,000 signatures. Sharing petitions on the Twitter is

reminiscent of traditional activities in boycott speech. It adds an action that users can participate in to show support besides liking the tweet or retweeting.

## CHAPTER FIVE – Mimi Groves

### **Background on Mimi Grove’s Snapchat video and the subsequent Cancellation of Mimi Groves and Jimmy Galligan**

The first part of this chapter provides background information on Mimi Groves and Jimmy Galligan and their cancellations on Twitter. Then this chapter will explain why Groves’s speech may be considered hate speech. The second part of this chapter summarizes how cancel culture impacted the discourse surrounding her speech. Jimmy Galligan was in high school when he received a video in 2020 of another classmate, Mimi Groves, using the n-word in a three-second clip.<sup>257</sup> In the video, Groves had recorded herself on Snapchat in 2016 after she had received her learner’s permit.<sup>258</sup> In the video she states, “I can drive,” followed by the n-word and Groves sent the message to a friend (Snapchat is known for only allowing a person to see messages once expect for a few circumstances).<sup>259</sup> Apparently the video was saved, and circulated to some attending the school at Heritage High School, but did not cause much shock. Galligan stated in The New York Times article about the incident that the slur was regularly

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<sup>257</sup> Dan Levin, *A Racial Slur, a Viral Video, and a Reckoning*, The New York Times, (Dec. 26 2020) <https://www.nytimes.com/2020/12/26/us/mimi-groves-jimmy-galligan-racial-slurs.html>.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*



uttered in the classroom at school.<sup>260</sup> According to Galligan he had raised the issue with teachers and administrators, but the complaints had gone nowhere.<sup>261</sup> So Galligan saved the video.<sup>262</sup>

In 2020, Galligan and Groves were now seniors preparing to go to college. Groves was set to attend the University of Tennessee, Knoxville, and join the cheer team. Galligan was going to attend Vanguard University in California. In June 2020, conversations about race and equity increased due to the police murder of George Floyd and subsequent protests. Like many others on social media, Groves posted on her Instagram account that people should “protest, donate, sign a petition, rally, do something” for the Black Lives Matter movement.<sup>263</sup> Soon after someone commented on the post and pointed out, “You have the audacity to post this, after saying the N-word.”<sup>264</sup> Soon after Galligan posted the saved Snapchat video of her saying the slur publicly. It went viral on Snapchat, TikTok, and Twitter.<sup>265</sup>

Within the next 48 hours Groves was removed from the cheer team at the University of Tennessee and withdrew from the school after receiving an ultimatum from the school that if she would not withdraw, they would rescind her application.<sup>266</sup> After the backlash Groves stated: “At the time, I didn’t understand the severity of the word, or the history and context behind it because I was so young.” She added that the slur was in “all the songs we listened to, and I’m not

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<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

using that as an excuse.”<sup>267</sup> One peer of Groves, who identified as Black, tried to defend her by stating on social media that she had privately apologized for the video earlier. Groves withdrew from the university, and now attends a local community college.

Galligan had stated that he had no regrets about posting the video and that he “taught someone a lesson.”<sup>268</sup> Galligan’s home life is complicated. His dad is white, and his mom is Black.<sup>269</sup> He told The New York Times that his father once stated that white privilege did not exist and that his dad had once used the n-word at home. Galligan had to explain to him that it was unacceptable when joking around.<sup>270</sup> Galligan also mentioned racism and insensitivity at the school as well. He recalled being “mocked with a racial slur by students” and “getting laughed at by a white classmate after their senior-year English teacher played an audio recording of the 1902 novella “Heart of Darkness” that contained the slur.”<sup>271</sup> There was another incident where a student made offensive and threatening comments about another Muslim student.<sup>272</sup> When Galligan brought the statements to the principal, he stated that the principal declined to act, citing free speech.<sup>273</sup>

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<sup>267</sup> *Id.* See also Alex Parker, *Be Careful What You Snapchat: A Cancel Culture Tale*, Red State, (Dec. 27 2020) <https://redstate.com/alexparker/2020/12/27/mimi-groves-jimmy-galligan-cancel-culture-n-word-new-york-times-snapchat-virginia-n300662>. Furthermore, Grove said she did not understand the context because of her age. *Id.* She also stated that her parents did not allow such language. *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

The school itself is located just across the Potomac River in Maryland in the Loudoun County suburbs, which are among the wealthiest in the nation, and the schools consistently rank among the top in the state. At the time when both students attended, the student body at Heritage High was about half white, 20 percent Hispanic, 14 percent Asian-American, and 8 percent Black, with another 6 percent who were mixed race. It appeared that Groves was not the only student that had used a slur before. “A report commissioned last year by the school district documented a pattern of school leaders ignoring the widespread use of racial slurs by both students and teachers, fostering a ‘growing sense of despair’ among students of color, some of whom faced disproportionate disciplinary measures compared with white students.”<sup>274</sup>

One difference between the Groves story and other stories about canceled persons in this thesis is that the publication that wrote the story was criticized for publishing the article. After the story was published by The New York Times, the publication received criticism from conservative news publications for publishing the story.<sup>275</sup> One writer for the New York Post wrote that The New York Times treated Galligan sympathetically and did not discuss the “difference between using the word as an epithet and using it in the manner Groves did.”<sup>276</sup> Another writer for a different publication argued similarly about the lack of context. “They neglected to mention that the slur Mimi Groves used was the ‘soft a’ variant of the ‘n word,’

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<sup>274</sup> *Id.* “It is shocking the extent to which students report the use of the N-word as the prevailing concern,” the report said. School system employees also had a “low level of racial consciousness and racial literacy,” while a lack of repercussions for hurtful language forced students into a “hostile learning environment,” it said.”) *Id.*

<sup>275</sup> Robby Soave, *The NYT’s obscene drive to destroy a teen’s life*, NY Post, (Dec. 29 2020) <https://nypost.com/2020/12/29/the-nyts-obscene-drive-to-destroy-a-teens-life/> (stating that the NY Times was assisting Galligan’s “desperate quest to ruin the life of a young woman” by publishing the article). *NYT Celebrates “Cancel Culture” Teen For Ambushing Classmate With 3-Year-Old “N-Word” Video*, Revolve, (Dec. 28 2020) (“What was disturbing about the story was not just the incident itself but the way the Times celebrated it and celebrated the student who posted the video, calling the incident ‘a racial reckoning.’”).

<sup>276</sup> *Id.*

commonly used as a term of endearment or as a synonym for ‘you guys’ and not the more offensive ‘hard r’ n word.”<sup>277</sup>

Racism is a distinct form of hate speech that has some key differences than other forms of hate speech discussed in this thesis. Racist speech has been ingrained in American society and hierarchies. In 1954 studies led researchers to find that four fifths of Americans harbored enough antagonism toward minority groups to influence their daily conduct.<sup>278</sup> This is disturbing when you think about the recency of those racist attitudes. This is only one to two generations ago.

The use of the word by a white classmate is harmful for several reasons. First, the debate over who can say the slur, refer to the slur, or repeat the slur from music, and the difference between the “hard r” and “soft a” is one that also relates to the power dynamics about who gets to claim the word. While slurs can be dehumanizing and degrade their targets, slurs can, and many times have been, reclaimed within the target group to express solidarity and pride and excluded from other to achieve a change in power.<sup>279</sup> The use of a slur by groups that have no ability to reclaim the word can also be a signal to other non-targeted groups that the bigoted

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<sup>277</sup> NYT Celebrates “Cancel Culture” Teen For Ambushing Classmate With 3-Year-Old “N-Word” Video, *supra* note 253.

<sup>278</sup> Gordon Allport, *The Nature of Prejudice*, 77-78 (1954).

<sup>279</sup> Mihaela Popa-Wyatt and Jeremy L. Wyatt, *Slurs, roles and power*. Philos Stud. 175, 2879, 80 (2018). <https://doi.org/10.1007/s11098-017-0986-2>. An example of reclaiming a slur is by the Asian rock group The Slants. Bill Chappell, *The Slants Win Supreme Court Battle Over Band's Name In Trademark Dispute*, NPR (Jun 19 2017). <https://www.npr.org/sections/thetwo-way/2017/06/19/533514196/the-slants-win-supreme-court-battle-over-bands-name-in-trademark-dispute>. When asked why they wanted to use a name that was used to bully Asians for their eyes the front man Tam said, “I wanted to change it to something that was powerful, something that was considered beautiful or a point of pride instead.” *Id.*

beliefs are acceptable.<sup>280</sup> If the culture around using slurs is significant it can pressure others who do not have a tendency to be bigoted to also engage in the behavior.<sup>281</sup>

Secondly because the video shared at a high school and largely ignored by classmates and administrators is an example of the larger power structures that benefit from the status quo at the expense of Black students. Some researchers describe these responses to incidences can create a *denial of a racial reality*.<sup>282</sup> The denial manifests when race is brought up in the classroom and it is met with statements such as “not everything is racial, you know” or nonverbals (rolling of the eyeballs) that “scream at you, here we go again.” Derek Bell calls this a defensive reaction that is often present in case study research on hate speech. This split in reaction is also evident in case studies of hate speech: “a refusal to believe that real people, people just like us, are racist.”<sup>283</sup> The racial insult remains one of the most pervasive channels through which discriminatory attitudes are imparted.<sup>284</sup>

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<sup>280</sup> Mihaela Popa-Wyatt and Jeremy L. Wyatt, *supra* note 281, at 2986. A study by Warner and DeFleur (1969) shows that those with a low likelihood of using slurs are more likely to act in a discriminatory manner if they are members of a society in which there is a significant number of bigots, and they know that their actions will be broadcast. *Id.* (citing Warner, L., & DeFleur, M. L. *Attitude as an interactional concept: Social constraint and social distance as intervening variables between attitudes and action. American Sociological Review*, 34, 153–169, (1969). This is because they factor in the social cost of disapproval from a dominantly bigoted community. *Id.* However, in predominantly non-bigoted societies the reverse is true: bigots hide their beliefs so as to avoid social disapproval. *Id.* Thus, when a bigot uses slur words, they make it more permissible for others within their social circle to give voice to their bigotry. *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> Derald Wing Sue, Annie I. Lin, Gina C. Torino, Christina M. Capodilupo, and David P. Rivera, *Racial Microaggressions and Difficult Dialogues on Race in the Classroom*, 15:2 *Cultural Diversity and Ethnic Minority Psychology* 183, 86, [https://psycnet.apa.org/fulltext/2009-05145-010.pdf?auth\\_token=47304df3e1576ba574c7371612c427a79e29a323](https://psycnet.apa.org/fulltext/2009-05145-010.pdf?auth_token=47304df3e1576ba574c7371612c427a79e29a323).

<sup>283</sup> Derek Bell, *Public Response to Racist Speech: Considering the Victim's Story*, 87 *MICH L. REV.* 2330, 37 (1989).

<sup>284</sup> Richard Delgado. *WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING*, 17 *HARV CIV RIG-CIVIL LIBERTIES L. REV.* 133, 4, (1982).

## **Discourse Analysis on the response to the New York Times article about Mimi Grove's video on Twitter**

The discourse in the Mimi Groves case study was centered on proportionality of the consequence. There were users that defended Galligan's actions and the decision for Groves to deny admittance to University of Tennessee. The users who believed the response was proportional cited several reasons. These users believed that racism was finally being taken seriously by schools and organizations. Users also noted that this would be a signal to other people that there can be real consequences for repeating the word in any context. Other users who argued that the consequence was not proportional often cited Groves' age and that Black culture makes it hard to know whether the word is acceptable or not. Some also believed that Galligan's response was vengeful when he reposted the video.

Below are examples of public condemnation, group, condemnation, and economic sanctions and where and how they occurred on the platform.

### **Public condemnation**

Jimmy Galligan reposting the video of Mimi Groves three years after it was initial posted semi-privately was the first initial instance of public condemnation. However, when The New York Times published an article about the two teens and the incident, there was a second wave of publicity. Most of the tweets relate to the second wave of publicity about the incident. Many of the tweets about the incident were replies or quote tweets to the New York Times article.



The publication of the video also provided more context for people. Some users used the video to try to explain the difference between using the “er,” as Groves did in the video, and the Black community reclaiming the word. Users also pointed out that she was not singing along in a song as other users claimed.



In this case there was public condemnation of both the speaker that used hate speech, Groves, and the person that went public with the evidence of it, Galligan. While people wanted Groves to lose opportunities for using a slur, some users on Twitter also wanted Galligan to lose opportunities for publicizing the video. Users tagged Galligan's YouTube page likely for people to condemn him there.



## Group condemnation

Most of the group condemnation occurred under replies to articles about the incident supporting Groves or condemning Galligan. There were tweets trying to explain why the word was harmful and why Groves should be held accountable and other replies supporting her for making a mistake. Below is an example of a tweet followed by some of the replies to it where some discussion took place.





## Tweet



**ThatGirlAtTheParty** Is Ope... · 12/27/20 ...

This is why I am not ok with ANYBODY using this damn word. It sends a confused message to say this girl needs to be cancelled & not go to school but we, as Black people, are calling each other this awful word all the time.

[#MimiGroves](#)



A Racial Slur, a Viral Video, and a Reckoning  
[nytimes.com](#)

30

13

131



after a three-second video caused an uproar online. The classmat...  
[nytimes.com](#)



**Buchi Imonugo**  
[@buchi2xtimes](#)

Y'all wanna blame everything except the individual. We live and die by the choices we make everyday. She volunteered herself as tribute, and now a county of kids whether through fear or real change know this behavior won't be tolerated

9:01 AM · Dec 28, 2020



50



6



Share this Tweet



**Michael B** [@luckisquantum](#) · Dec 28, 2020



Replying to [@tgatp](#)

Maybe [#MimiGroves](#) is a racist. I don't know, but that 3 second video is not evidence of racism. It looks like a 15yo trying to sound cool using the pop culture she is surrounded with.



**Denise Byrnes**  
[@DeniseByrnes23](#)

Yeah no! I have a 22 yr old and a 16 yr old and BOTH know better than to say that word, EVER! And as a grown adult I have ALWAYS known to not say it! Some ppl just are not raised properly and it shows and eventually bites them in the behind! Life lessons!

6:50 PM · Dec 28, 2020



4



1

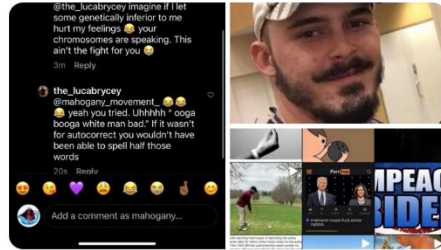


Share this Tweet



There was also a call to mobilize Black Twitter to help support Galligan. The phrase “Black Twitter do your thing” is a signal to other Black Twitter users. It can be a call to challenge the speech or even find out information about the offending person for economic sanctions like contacting the university. In this case it was used to find someone that was accused of attacking Galligan and making fun of George Floyd. This was used to find information about the person so that they can suffer economic sanctions. The economic sanctions in this instance were getting the person fired.

**Black Twitter** do your thing, I'm going to start a thread of every white supremacist that is attacking [#JimmyGalligan](#) online. Making fun of George Floyd's death... Bryce, I'm so annoyed that I can't figure out your last name Ima give it 24 hours [#blacktwitter](#) [#exposeracists](#)



The use of the hashtags for Jimmy Galligan and Mimi Groves also did not automatically signal support for one person either way. Some used [#jimmygalligan](#) to accost him for posting the video while some used it to support him making it public. This was similar for the [#mimigroves](#). The hashtags just meant that the incident would be talked about, but it was an efficient way to find conversation about the parties on each side.





## Economic sanctions

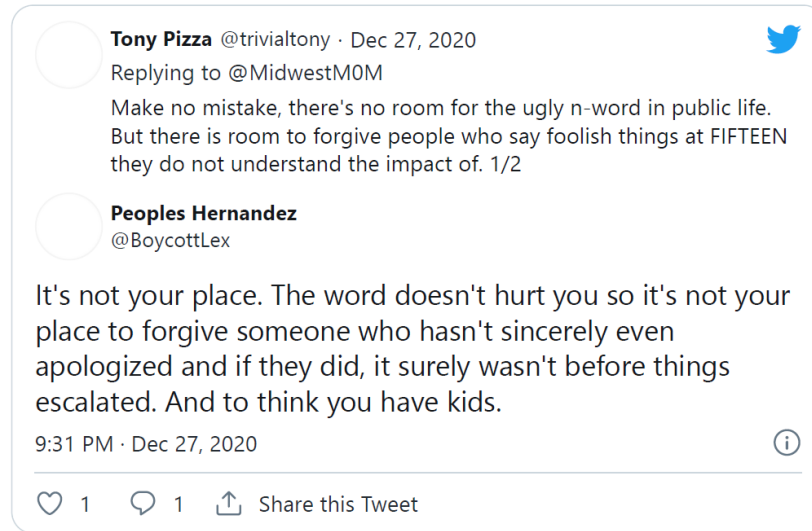
Groves suffered economic sanctions in the form of withdrawing from her university after claiming to receive pressure from the university to do so. Not very many users tagged the

university or the high school in the search conducted in this research however, users did previously tag the university and its cheer team to condemn Groves for using the slur.



Most of the discussion after the New York Times article was posted was whether the consequences for Groves's actions were too harsh. Users responded to each other essentially debating the consequences and the effect of Groves's actions.





[#JimmyGalligan](#) **there was nothing "little"** about you saying the N-Word with the Hard R Mimi. Not even black people will step that far and say it. You ruined your OWN life. And now your paying for it, the right way. Don't say the N-Word or any racial slurs. Just don't.

At home, Ms. Groves's bedroom is festooned by a collection of cheer trophies, medals and a set of red pompoms — reminders of what could have been. Her despair has given way to resignation. "I've learned how quickly social media can take something they know very little about, twist the truth and potentially ruin somebody's life," she said.

4:02 AM · 12/28/20 · [Twitter for iPhone](#)

**Brett Gordon** @BrettGordon20 · Dec 29, 2020

Replying to @spinning\_will

I did see that.  
The guy waited 3 years to drop the hammer on a (then freshman in HS) stupid 3 second video.  
I did so much stupid stuff at 15 it's scary

**Will\***  
@spinning\_will

Omg yes. If there were camera phones around when we were 15, we'd all be blacklisted and unemployable. Doing stupid shit at 15 is how you learn. Not by destroying a girl's dreams/life 3 yrs later. It's absurd. Mob justice is injustice.

1:40 PM · Dec 29, 2020

3 1 Share this Tweet

**D.S.M.H.**  
@DeathStole

It's fucked up to destroy someone's life on purpose for something they did when they were 15. Especially when that damn "N" word spreads like wildfire in rap songs they all listen to these days & 90% of kids raised on it don't understand why they shouldn't use it. #MimiGroves

8:19 PM · Dec 27, 2020

26 11 Share this Tweet

**Louis Meltzer** @louism423 · Dec 30, 2020

Replying to @Janisha31 and @khiapremium

The story is unbelievable kids today hear the word n.... used in so many ways  
it comes out of a lot of peoples mouth like water  
used as nouns verbs and adjectives and this girl posted a video when she was 15 that she got her drivers license and said I Can Drive spare me

**Kayla Thee Stallion** **Bby Onika Era**  
@Michelles\_tato

It's funny, cause I was 15 last year, and that word has never come out of my mouth. I knew what that word meant as a little kid. She said that with the hard "r", and knew what she was doing. Actions have consequences. It's insane this is even debatable.

12:18 AM · Jan 10, 2021

1 Share this Tweet

## Summary

First this section will summarize the findings in the response to the New York Times article about Groves. The public condemnation occurred in responses directly to the New York Times article and to the video of Groves that was reposted on Twitter. Since the article was just as much about Groves saying the slur in the video as it was about Galligan reposting the video, Galligan received some public condemnation for reposting the video because people believed it went too far. The article itself is framed in a way that it tries to discuss two perspectives: the harm caused by the video and whether the response to that harm went too far or was vindication. The discussion on Twitter further magnified the perspectives in the article.

The two parties condemned represented those two perspectives. The new public condemnation of Galligan represented an argument that Galligan's response was vindictive, and that Groves' consequences were too harsh. Groves' public condemnation represented an argument that the video was hate speech and the consequences were well deserved. Out of all the case studies there were more replies and discussions about the cancelation. This might also be because Groves is a private figure in contrast to J.K. Rowling and Sia who were famous when they were canceled. This could also be because there was an identifiable consequence from the speech that was not present in the other two case studies. There was also debate about the harm. Some defending Groves pushed back on her speech wrongly claiming that she was singing a song, making excuses for her age at the time, and stating that it is "confusing" if the word is hurtful or not because it is said in rap.

Although all case studies had some instances of pushback about whether the speech was offensive as transphobic or ableist, this case had the most pushback about whether Groves was racist for using the word. There was a notable difference in the amount of debate and defense in this case over racist speech. The response to the speech relates to a commitment to the status



quo. It is impossible to know whether the difference in pushback was result of users listening to some groups experiences over other or just that the pushback did not make it to tweet form. But it could be a refusal to listen to the user talking about race and racism that was present when other groups talked about transphobia or ableism. Black people challenging racism may be perceived as an overaction where other groups challenging transphobia or ableism is not.

One recognizable benefit of the discussion was reaching user with differing opinions and people with differing opinions were engaging in debate. One of the limits of public condemnation is its inability for the important discussions by marginalized groups to reach audiences that identify outside their communities. In this case it seemed that users within Black Twitter and outside of Black Twitter were interacting. However, the ease of stating an opinion may be shrouded in an unwillingness to listen or change when the subject is racist speech conveying a subordination for this kind of response to hate speech compared to others. Cancel culture may not work the same for all groups responding to hate speech because their status in society is too low to overcome issues with counterspeech like credibility and agency.

Again, group condemnation was spilt into some users condemning Galligan and others condemning Groves. One unique aspect of the group condemnation in this case study was the specific call for Black Twitter to help condemn someone that the user suspected was attacking Galligan online and making fun of George Floyd<sup>285</sup> by saying “Black Twitter do your thing.”<sup>286</sup> The mobilization was the most organized example yet. The user called for Black Twitter to find

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<sup>285</sup> George Floyd was murdered by a white police officer during his arrest in Minneapolis on May 25, 2020. Molly Gahagen, *George Floyd's Family reflects on his death and legacy*, The Johns Hopkins News - Letter, (Apr. 8 2021) <https://www.jhunewsletter.com/article/2020/12/george-floyds-family-reflects-on-his-death-and-legacy>. George Floyd's death represented the prevalence of police brutality. *Id.*

<sup>286</sup> “Twitter do your thing” is the concept of finding people online and exposing them in a way that affects their everyday lives, such as getting them punished at their school or fired from their job. Editorial Team, “*Twitter, do your thing*”, Metea Media, (Sept. 14 2018) <https://meteamedia.org/12500/editorial/twitter-do-your-thing/>.

the person's name and place of employment so that they could get him fired for his speech. The user posted a photo of the suspected person along with their first name, Instagram account and comment about George Floyd. The user also tagged Black Twitter by including a hashtag in the tweet. The tweet is an example of many campaigns by Black Twitter to expose racists and racist speech. The coordination is like the tactics used in the boycott era to expose businesses that were discriminating against Black patrons and potential employees. The use of Black Twitter is helpful because it represents a community of people that identify as Black, and the use of the words signal to these users that the issue is important.

Lastly the calls for economic sanctions were minimal for Groves because she had already received consequences for her speech. The discussion was mainly whether the economic sanctions were too harsh. People who believed that the consequence was too harsh blamed rap, music; they also defended her speech under the First Amendment, and they pointed out her use of the n-word as a youthful mistake. It would be helpful to know about the discourse before Groves decided not to attend the University of Tennessee to see if similar arguments were being made about proportionality as compared to after the New York Times article was published.

## CHAPTER SIX

### Research Question One Discussion

The purpose of this chapter is to answer research question one with the most significant findings from the research. This chapter has three parts: 1) How do users publicly denounce hate speech? 2) How do users use group condemnation? and 3) How do users argue for economic sanctions?

#### Public condemnation

Recall that Richard Delgado and Jean Stefancic define public condemnation as denouncing the group or individual publicly.<sup>287</sup> This can demonstrate to other users on the platform that disseminating hate through this medium brings consequences and can give pause to others who might be tempted to follow suit.<sup>288</sup> In all of the cases there were example of users explaining why the speech was harmful in way that was similar to how researchers would describe how the speech contributes to transphobia, ableism, and racism.

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<sup>287</sup> Richard Delgado & Jean Stefancic. *Hate Speech in Cyberspace*, 49 WAKE FOREST L. REV. 319, 29 (2014).

<sup>288</sup> *Id.*

*I'm not here to cancel JK Rowling as a person and stoke mob outrage. I'm here to just educate and inform. Trans rights are human rights and trans women are women. Also white feminism can sometimes intersect with trans exclusion or white supremacy which is unjust.*

The quote above encompasses several points made by researchers Charlotte Jones and Jenn Slater that discussed how issues of women's safety in public places can also be trans exclusionary.<sup>289</sup>

*Also, daily reminder that the portrayal of autism in "Music" is stereotyped, over exaggerated and extremely damaging to the autism community. Sia has actively ignored the Autism community, told us she "doesn't give a fuck" and continued to produce the most tone deaf movie.*

The user explained that the movie was an exaggerated portrayal of the autistic community that was harmful to that community. The user also mentioned that Sia was not receptive to the criticism by the autistic community. The comment expresses the research by Alexandria Prochnow that stated that the magical/savant trope is harmful to use to characterize people from the autistic community because it is unrealistic.

*I don't know about you but I do not go around calling my friends "N\*GGERS". Yeah, we say nigga sometimes, but we can. This girl was not confused.*

Lastly this user expressed the difference between the hard "er" and "a" within the Black community and how Black people have reclaimed the word for their community.

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<sup>289</sup> Charlotte Jones and Jenn Slater, *supra* note 221 at 847.

These responses were encapsulated in under 280 characters and could not possibly contain all the research that the experts had. However, it demonstrates that users are responding to racism, ableism, and transphobia in similar ways as critical researcher writing on these topics. The words may not be as eloquent and developed but it is conversational and responsive in a way that a thousand-word research paper might not be. It is helpful that users are not only publicly using counterspeech on Twitter by tweeting but the way in which users are challenging hate speech in a concise critical manner is beneficial to the speech environment because in some ways it explains why the speech is harmful.

Secondly this paper explored how users are publicly getting their message across. The use of embedded content from other platforms creates new mediums for public condemnation besides tweets. Moreover, threads were used to avoid the 280-character limit by creating a chain of tweets that could describe in more detail why a message was hate speech.

*This performance is a caricature of autistic body language. It's unsettling, and insincere. And it is deeply reminiscent of the exaggerated mannerisms non-autistic people often employ when bullying autistic & developmentally disable people for the ways we move.*

Followed by:

*There is absolutely nothing wrong with the ways autistic people move, or the ways we make facial expressions. Some of us roll our eyes and put our teeth over our lips as a stim or just because it is comfortable. But we do those things naturally. Maddie Ziegler does not.*

The thread places all the details in one place and makes the conversation easy to follow. This user was able to break down scenes from the movie and further explain why the representation was harmful to the autistic community.

Lastly, the use of trigger warnings at the beginning of tweets were used as labels for the hate speech. In the Sia case study several tweets were labeled as *ableism*. The labeling was another explanation of why the speech was hate speech and what category of hate speech it fell into. It was also empathetic to the audience members that may wish to avoid the message. This demonstrated a culture of concern for the audience that is not always emphasized in the First Amendment.<sup>290</sup>

The public condemnation on Twitter is important because cancel culture has been labeled as ineffective counterspeech. However, what these findings show is that cancel culture as counterspeech on a platform like Twitter can have critical information necessary to the conversations to respond to hate speech. Users are both concisely and, through several ways, expansively responding to hate speech. This benefits that marketplace of ideas because the audience may never access or choose to expose themselves to this valuable information. This

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<sup>290</sup> For example, the captive audience doctrine in the First Amendment means that the speech in question is unwelcome; second, the audience is unwilling. Alexander Brown, *Averting your eyes in the Information Age: Online Hate Speech and the Captive Audience Doctrine*, 12 Charleston L. Rev. 1, 2 (2017). The court has largely responded to this type of speech by stating that the audience should “avert their eyes” especially in public places. *Id.* The court has made some exceptions in private spaces such as the home and workplace as well as semi-public places such as the bus. *Id.* In Cohen, for example, the Court ruled that when Cohen wore a jacket that displayed the phrase “Fuck the Draft” in the public corridors of a courthouse this did not create a captive audience because others “could effectively avoid further bombardment of their sensibilities simply by averting their eyes.” *Id.*, at 32 (quoting Cohen v. California, 403 U.S. 15, 21 (1971)). Similarly, in Spence v. Washington the Court held that passersby who might have been offended by a flag hung from a second-floor apartment window were not a captive audience because they “could easily have avoided the display.” *Id.* (quoting 418 U.S. 405, 12 (1974)). And, in Heffron v. International Society for Krishna Consciousness, Inc., 100 Justice Brennan opined that “[b]ecause fairgoers are fully capable of saying ‘no’ to persons seeking their attention and then walking away, they are not members of a captive audience.” *Id.* (quoting 452 U.S. 640, 57–58 n.1. (1981)).

paper also explored how users are empathic to audience members of marginalized communities by using trigger warnings. A revelation that could imply that the dynamics of cancel culture recognizes that counterspeech is not just about being heard but also about the effect on the audience.

### **Group condemnation**

Delgado and Stefanie define group condemnation as encouragement members of targeted groups and their allies to apply pressure to hateful speakers.<sup>291</sup> One of the major findings from this tactic was that there was intended mobilization of specific targeted groups on Twitter to combat hate speech on the platform. For example, the use of the #actuallyautistic hashtag encourages members of the autistic community to share their stories and frustrations with the film.

*Great! Glad you're on the "Sia did a bad thing" train. A friendly reminder from an #ActuallyAutistic person, Autism isn't a mental illness. It's a mental difference.*

User who self-identified as autistic created a space where they could condemn as a group, but also a space where people outside of the community could learn from their frustrations and experiences. The hashtag makes finding this information easier because it is searchable.

Furthermore, Black Twitter users were also mobilized as a group on Twitter. In a more informal way, a user called for Black Twitter users to find another user suspected of racism and white supremacy by tweeting "*Black Twitter Do your Thing.*" This call to action is a common one and essentially mobilizes users to find out background information about the offending

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<sup>291</sup> *Hate Speech in Cyberspace*, *supra* note 285.

person so that they cause the offending person to receive consequences – usually economic sanctions. The mobilization tactics by these users show that even if there may not be physical groups for autistic or Black users on the application, these users are creating spaces and techniques to call out to one another.

Another important finding was the use of hate speech to respond to hate speech. In the JK Rowling case study users condemned JK Rowling by using slurs and sexist comments about her appearance. For example, one user said *Boycott the bitch*. Another user stated:

*Probably catch some hate for this, but reckon JK Rowling hates Trans women cause they look better than she does? She looks like a fool with makeup on.*

The example demonstrates a problem with regulating hate speech with cancel culture because sometimes the response to hate speech uses its own racist, sexist, or homophobic speech. And because anyone can be accused of hate speech regardless of their race, sex, gender identity etc. It could mean that people that do identify in these categories, and are challenged for their hate speech, will receive criticism that contains its own message of hate speech.

J.B. Kay argues in her book on feminism and communicative injustice that inequalities in language-use and public speech should also be understood as themselves being a form of gender injustice.<sup>292</sup> Kay notes that historically women have been eliminated and purposefully left out of public speech.<sup>293</sup> While women now are consistently being presented with messages to speak up and be heard, Kay argues that the actual space to make it a reality to be listened to does not exist

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<sup>292</sup> Jilly Boyce Kay, *Gender, Media, and Voice: Communicative Injustice*, 9, Palgrave Macmillan, 2020.

<sup>293</sup> *Id.*, at 4-5.



currently.<sup>294</sup> Communicative injustice refers to the ways that women, queer identifying people, people of color and disabled people are denied a voice in a society that also claims that it encourages these groups to speak publicly.<sup>295</sup> It also suggests when marginalized speakers are condemned for their hate speech they are more likely to receive a response that uses hate speech.<sup>296</sup>

Lastly, condemnation for certain hate speech may receive more backlash than condemnation for other forms of hate speech. There was considerable debate over whether the speech was racist in the Groves case study than in the other case studies on transphobia and ableism. The messages in the other case studies may have not reached users that would have pushed back on whether it was ableist. However, many users made excuses for the speech or denied that it was racist. While it is good to see the messages potentially reaching audiences of different ideologies and backgrounds the effectiveness for certain groups to condemn hate speech with minimal pushback versus other groups is concerning. Silence does not mean agreeance<sup>297</sup> but audible dissent can show where the breaking point is for the audience to tolerate cancel culture as counterspeech. The pushback in the racist hate speech case study could be represented by a commitment to the status quo of the power dynamics behind that speech.

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<sup>294</sup> *Id.*, at 29.

<sup>295</sup> *Id.*, at 8-9.

<sup>296</sup> *Id.*, at 8 (“And yet clearly not all women are at risk in the same way----it is poor women, migrant women, indigenous women, Muslim women, queer women, trans women, sex workers and women of colour who most at risk of violence and whose voices are most quickly and viciously attacked or silenced.”).

<sup>297</sup> The spiral of silence theory is one that purports that people tend to hide their opinion away when they think that they would expose themselves to “isolation pressure” with their opinion. See Elisabeth Noelle-Neumann, *The Spiral of Silence a Theory of Public Opinion*, 24:2 *Journal of Communication* 43, (2006) <https://doi.org/10.1111/j.1460-2466.1974.tb00367.x>.

Overall, the group condemnation on Twitter illustrates how cancel culture can be used to mobilize targeted groups and encourage them to engage in counterspeech that responds to hate speech affecting them. It also demonstrates how groups can get their messages to members outside of the targeted group by making the counterspeech by the marginalized group more accessible. The group condemnation also highlights issues with cancel culture as counterspeech to regulate hate speech. The first is that it can use hate speech within the counterspeech and secondly that some responses to hate speech may receive more push back than others.

### **Economic sanctions**

Richard Delgado and Jean Stefaniec define economic sanctions as activities that may nudge individuals to “moderate their antisocial activity.” Users on Twitter responded with calls for economic sanctions in every case study. In the Sia and JK Rowling study there were calls to boycott their products as well as organizations that were employing them. Users embedded videos to symbolically protest the speech such as a user burning her Harry Potter book collection. Another user also linked a petition to boycott Sia’s film which received over 65,000 signatures. Even though each case had users debating whether economic sanctions should be used, the Groves case was the only one where the actual consequences were debated because she had a clearly identifiable economic sanction.

Users debated whether Groves’ punishment was fair considering her choice to record herself saying the n-word at 15.

*It’s fucked up to destroy someone’s life on purpose for something they did when they were 15. Especially when that damn “N” word spreads like wildfire in rap songs they all*

*listen to these days & 90% of kids raised on it don't understand why they shouldn't use it.*

*#MimiGroves*

There were also comments that there was a better way Galligan and others should have responded.

*I can't help but feel disappointed about your approach. You want to instill fear, not educate the children in a friendly manner to not say racial slurs. You know what that leads to? Closed toxic racist groups who hate the blacks for taking away their freedom of speech.*

The response to the anger by the Black community and Jimmy Galligan, the student that posted the video, is important because it represents a lack of tolerance for members of the Black community to be outraged. The argument assumes anger is used to only make others feel bad or for seeking revenge.<sup>298</sup> Anger could be simply a call for recognition that a harm has been done.<sup>299</sup>

Audre Lorde and Amia Srinivasan write about how anger is a tool for change. Audre Lord addresses the usefulness of anger in her Keynote speech at the third annual NWSA convention on “Women Respond to Racism.”<sup>300</sup> For Lorde, anger is not only a ‘source of energy’ that can directly serve political ends, but also a source of ‘clarification’, a means by

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<sup>298</sup> Amia Srinivasan, *The Aptness of Anger*, 26:2 *The Journal of Political Philosophy* 123, 28 (2018) (stating that some believe that anger has to involve a “desire to make the offending party suffer.”).

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*, at 9.

which women can come to better see their oppression.<sup>301</sup> She asks the audience to see that anger can be useful for understanding other's experiences that are unlike yours because oppression in many forms breeds anger.<sup>302</sup> She asks the audience to listen to that anger instead of responding with fear or guilt from the response.<sup>303</sup> Srinivasan calls the conflict between victims of oppression having to choose to either act prudential rather than angry a form of injustice called affective injustice.<sup>304</sup>

The questioning of the fairness of economic sanctions is valid, but we should be aware of how accepting we are over some economic sanctions and which ones are trivialized. The response to the counterspeech commenting on hate speech is just as important in maintaining the status quo. In terms of the marketplace of ideas theory a critical race theory approach would examine how much competition an idea faces in terms of its acceptance to the marketplace. This can convey how not only that idea is accepted into the marketplace but also how the people who believe that idea are accepted in the society because of the concept of racial realism. Recall that racial realism is not just the unfavorable impressions of members of other groups but the representations of those groups in the power hierarchy of a society. The ability to determine which "ideas are authorized, and which are suppressed is the foundation of cultural domination."<sup>305</sup>

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<sup>301</sup> *Id.*

<sup>302</sup> *Id.*, at 7.

<sup>303</sup> *Id.*

<sup>304</sup> Amia Srinivasan, *The Aptness of Anger*, 26:2 *The Journal of Political Philosophy* 123, 28 (2018).

<sup>305</sup> Robin DiAngelo, *White Fragility: Why it is so hard for white people to talk about race?*, Beacon Press, 111 (2018).

## **CHAPTER SEVEN**

### **Research Question Two**

The purpose of this chapter is to answer research question 2: How does the platform Twitter influence the prevalence of cancel culture as a form of counterspeech? And does Twitter as a platform help address the power imbalance of counterspeech by minorities and lack of agency and credibility as minority speakers? Does it provide effective tools for counterspeech? Twitter will be analyzed as a platform for its ability to increase access and credibility for minorities engaging in counterspeech. This chapter will address how well the platform allows for (1) public condemnation; (2) group condemnation; and (3) economic sanctions. The platform culture, terms of service, account policies, and platform architecture will be examined to answer this question.

#### **Public condemnation**

This section will discuss how the application's architecture allows for public condemnation of hate speech. The second portion will explain how the application dissuades public condemnation of hate speech. First, Twitter can be used publicly. Access to a public users' tweets can be done even without an account with the application. When users sign up on the application, they can elect to make their account public or private. After they sign up, they can also change their account from public to private at any time. To sign up, a user needs an

email or phone number, and a password. The application can be accessed from a computer or mobile phone with reliable internet service and, or data. These factors make the barrier of entry relatively low; an account is not necessary to view public accounts and tweets on the application. The culture of the application lends itself to be used publicly rather than privately.

The public nature of the application could influence the culture of the application. Other applications have more pseudonymous characteristics. Although users do have a username on Twitter, they allow and encourage users to share other personally identifiable characteristics such as a photo of themselves, full or partial name, location information, birthday, and job or school association in their bio. Contrast that with platforms like Redditt and Twitch which only share the username and a birthdate. A survey in 2019 of over 2,000 adult Twitter users in the US found that only 13% of the users elected to have their tweets private.<sup>306</sup> This does not mean that no one can access the tweets by these private users, only that these users can choose who can access their tweets by accepting them as followers. The more followers a person has, the larger the audience is that can initially view a user's tweet before they shared. But this public audience can be expanded by members of the application through certain tools.

The use of hashtags, liking and retweeting are tools that also help tweets reach a broader audience. Hashtags allow tweets from public account users to be more searchable to accounts that are not following the users that tweeted them. For example, by using the #SiaIsOverParty hashtag a tweet can be discoverable just by a search of tweets with the hashtag or by clicking on the hashtag from another tweet. The “#IsOverParty” hashtag is also a signal for other users that

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<sup>306</sup> Emma Remy, *How public and private Twitter users in the U.S. compare — and why it might matter for your research* Decoded, Pew Research Center (Jul 15, 2019). <https://medium.com/pew-research-center-decoded/how-public-and-private-twitter-users-in-the-u-s-d536ce2a41b3>.

the person referenced is being canceled. It is a label that denotes that the person has said or did something that is offensive. By placing the hashtag on the tweet, the user may be publicly signaling to others that the person referenced is “over, canceled.”

Liking and retweeting topics increases the likelihood that such posts will be shared with a wider audience. A retweet is the “act of sharing another account's Tweet to all of your followers by clicking or tapping on the Retweet button.”<sup>307</sup> When a tweet is retweeted by a user it becomes discoverable on the timeline (followers).<sup>308</sup> Then anyone they follow can retweet it to their timeline. This function makes it possible to spread these tweets that cancel hate speech to other communities and larger public spaces that can further the message.

Moreover, Twitter also allows content to be shared from other applications and platforms. For example, the Snapchat video shared by Groves was saved and upload to Twitter. Content that is shared in semi-private places, or at least perceived private spaces, can be easily linked from applications like Instagram and Tik Tok. As in Galligan and Groves’s case, something that might have been controversial to a small local community once shared on Twitter can become a viral campaign to cancel that person. The tweets a user shares on the Twitter platform with content linked from other platforms can be reshared with anyone on the application if they are a public account.

All these methods seek to expand how public denunciation is conducted by making the tweet more public, permanent, and searchable, but there are several ways Twitter limits publicity of such tweets. One way the application limits tweet publicity is through allowing its users to

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<sup>307</sup> *Id.*

<sup>308</sup> A timeline is a real-time stream of Tweets. *Id.* Your Home timeline, for instance, is where you see all the Tweets shared by your friends and other people you follow. *Id.*

“mute” words, phrases or hashtags.<sup>309</sup> Muting not only removes these tweets from the notifications but also erases tweets from the user’s timeline, and from replies to Tweets.<sup>310</sup> The default for muted words is to have them muted for forever unless the user specifies otherwise in the settings.<sup>311</sup> Muting words also mutes the words hashtag as well.<sup>312</sup> So if “canceled” is a muted word for a user then “#canceled” will be muted as well. Twitter also allows you to mute conversations. Conversations are tweets and all the replies to them. When a user mutes a conversation, “you won’t get any new notifications about that conversation.”<sup>313</sup> Users, “however, still see Tweets from the conversation in your timeline and when you click into the original Tweet.”<sup>314</sup>

If a conversation or word is muted it can limit the potential audiences a retweet can reach. A survey of over 5,000 people revealed that some of the most common words that were muted since May 2020 through August 2020 included celebrities who were canceled for controversial statements.<sup>315</sup> They included “Trump,” “Kanye,” and “Ellen.”<sup>316</sup> When asked to provide a reason, “a third of respondents (31%) stated that they felt the words were ‘triggering,’ or poor for

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<sup>309</sup> Twitter, *How to use advanced muting options*, Twitter, <https://help.twitter.com/en/using-twitter/advanced-twitter-mute-options> (“We give you the option to mute Tweets that contain particular words, phrases, usernames, emojis, or hashtags.”).

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> Hoth Team, *Trump revealed as the most muted word on Twitter*, Hoth, (Aug. 25, 2020) <https://www.thehoth.com/blog/social-media-survey/>.

<sup>316</sup> *Id.*



their mental health. A quarter (26%) of people cited the reason ‘annoying/irritating,’ a fifth (17%) stated that they were ‘not interested,’ with the remaining quarter (26%) selecting ‘other.’”<sup>317</sup> Moreover, a crowd-sourced muting application containing a list of 670 muted words voted on by 3,488 internet users on Twitter had votes for words like “white-male,” “diversity,” and “sjw” (social justice warrior).<sup>318</sup> According to the website “Mute Life” the purpose is to escape internet outrage “by muting specific words from our social media timeline.”<sup>319</sup> It isn’t clear the purpose behind why people decided to mute these terms in particular, but it could suggest an attempt to eliminate viewing conversations about these issues on social media.

In summation Twitter’s application encourages public condemnation because it makes it easy to create public accounts and the platform culture demonstrates that most people prefer to have their account public. Second hashtags, likes, and retweets help increase publicity by allowing messages reach a broader audience. Lastly embedded content also allows for other content to be shared from other platforms on Twitter.

However, Twitter dissuades users from publicly condemning hate speech by allowing words, phrases, and conversations to be muted, thereby removed from some users view. The words muted on Mute Life.com suggest that the type of conversations that are excluded are contain counterspeech to hate speech.

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<sup>317</sup> *Id.*

<sup>318</sup> *Take back your social media feed*, mute.life, <https://mute.life/>. While most of the words receive the most votes were related to Donald Trump, (“trump” receiving 1313 votes, “fake news” receiving 541 votes, “donald” receiving 256 votes, “make america great again” receiving 212 votes, and “covfefe” receiving 178 points) these terms “sjw”, “white-male” and “diversity” all received over 100 votes. *Id.* Other terms such as “racist”, “feminism” and “toxic masculinity” were also listed. *Id.*

<sup>319</sup> *Id.*

## **Group condemnation**

The first part of this section will discuss how the application's architecture allows for group condemnation of hate speech on the application. The second portion will explain how the application dissuades group condemnation of hate speech.

The way Twitter assists with public condemnation is like the way Twitter assists with group condemnation. For example, just as Hashtags make tweets more searchable by people that users do not follow, they also allow for group participation in a cancelation event. Use of the hashtags, like the #IsOverParty, is a signal that the tweet is related to the cancelation of a person. It does not automatically mean that the tweet is positive or negative but more that it is commentary about the canceled person. As stated before hashtags can also mobilize groups. For example, the #actuallyautistic hashtag created a centralized place for a marginalized groups to explain their frustrations and experiences. It also signaled to the audience that they belonged to that group.

“Retweets” and “likes” show approval of a tweet. The more “likes” and “retweets” a tweet has, then it is possible that it will have more perceived consensus that the tweet is approved by a lot of people. Tweets can gain a lot of likes and retweets. Twitter publicly displays this information on every tweet. People can compare for themselves the positive or relative negative reaction on every tweet and reply. As of now, Twitter makes it so that anyone can comment on any tweet from a public account by using the reply and quote tweets button. The only exception is if the reply itself violates the terms and conditions.

A reply is “a response to another person’s Tweet” that occurs under the original tweet.<sup>320</sup> A quote tweet is relatively similar. It is an above the line response to another’s tweet. A retweet is a “Tweet that you forward to your followers by allowing it to be viewable on their timeline.”<sup>321</sup> A reply count, quote tweet count, retweet count, and like count is displayed next to the reply icon of a Tweet and indicates the total number of replies, quote tweets, retweets, and likes the Tweet has received. In Twitter culture, retweets and likes are associated with positive reinforcement while quote tweets and replies are associated with negative reinforcement. A new common term is called getting “ratioed.” This means that the user who responded with a quote tweet to another user’s original tweet has received more likes and retweets than the original. Being “ratioed” can be a signal that one opinion was better than the other.<sup>322</sup>

Secondly, linking content from other platforms allows for content to be taken from a private context and put into another context. A video that originated and was shared in one group of like-minded individuals on Snapchat or Instagram can be reposted for a different more public group on Twitter. Content from applications that have a history of racist and sexist speech can be shared on the application for people to disavow the information.

Lastly Twitter users may categorize themselves as some ill-defined communities of groups that identify themselves by a protected class. For example, gay twitter and Black twitter are not places but make up communities that follow each other with similar identities. These groups may feel freer to discuss race, gender, identity, sexuality, and their experiences in these

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<sup>320</sup> *Glossary* Twitter Help Center, *supra* note 259.

<sup>321</sup> *Id.*

<sup>322</sup> Ratio – What else does this word mean, Dictionary.com, <https://www.dictionary.com/browse/ratio>, (“On the social media platform Twitter, a ratio, or getting ratioed, is when replies to a tweet vastly outnumber likes or retweets. This means people are objecting to the tweet and considering its content bad.”).

spaces that make them feel comfortable because the information that they are posting is perceived to be going to a group of like-minded individuals.

The main way that Twitter dissuades group condemnation is by enforcing their terms of service called The Twitter Rules. The description states, “Twitter's purpose is to serve the public conversation. Violence, harassment, and other similar types of behavior discourage people from expressing themselves, and ultimately diminish the value of global public conversation. Our rules are to ensure all people can participate in the public conversation freely and safely.”<sup>323</sup> The Rules then have several sections outlining what is not allowed on the platform.

The first is “Safety.”<sup>324</sup> Under the safety rules, users “may not threaten violence against an individual or a group of people” or glorify violence.<sup>325</sup> Twitter defines threatening violence as “violent threats as statements of an intent to kill or inflict serious physical harm on a specific person or group of people.”<sup>326</sup> According to this policy, “you can’t state an intention to inflict violence on a specific person or group of people. We define intent to include statements like ‘I will’ ‘I’m going to,’ or ‘I plan to,’ as well as conditional statements like If you do X.” The policy does not extend to statements “as part of hyperbolic speech or between friends” or “where it’s clear that there is no abusive or violent intent, e.g., ‘I’ll kill you for sending me that plot spoiler!’”<sup>327</sup> Twitter defines glorification as “celebrating, praising or condoning violent crimes,

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<sup>323</sup> Help Center, The Twitter Rules, Twitter, <https://help.twitter.com/en/rules-and-policies/twitter-rules>.

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> Violent Threats Policy, Twitter, <https://help.twitter.com/en/rules-and-policies/violent-threats-glorification> (Mar. 2019).

<sup>327</sup> *Id.*

violent events where people were targeted because of their membership in a protected group, or the perpetrators of such acts,” such as using words like ‘I’m glad this happened,’ ‘This person is my hero,’ ‘I wish more people did things like this,’ or ‘I hope this inspires others to act.’”<sup>328</sup> You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.

Secondly Twitter has a hateful conduct policy under its safety rules. Under this policy, users “may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.”<sup>329</sup> This policy directly targets many forms of hate speech on the application against protected groups. The policy also makes an exception for slurs used within the protected community<sup>330</sup> and states that it takes the context into consideration before penalizing the alleged violator.<sup>331</sup> The penalty for violating this policy is that the tweet may be removed from the application.<sup>332</sup>

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<sup>328</sup> Help Center, Glorification of Violence Policy, Twitter, <https://help.twitter.com/en/rules-and-policies/glorification-of-violence> (Mar. 2019).

<sup>329</sup> Help Center, Hateful Conduct Policy, Twitter, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>.

<sup>330</sup> *Id* (When used consensually, the intent behind these terms [slurs] is not abusive, but a means to reclaim terms that were historically used to demean individuals. When we review this type of content, it may not be clear whether the intention is to abuse an individual on the basis of their protected status, or if it is part of a consensual conversation.”).

<sup>331</sup> *Id* (“To help our teams understand the context, we sometimes need to hear directly from the person being targeted to ensure that we have the information needed prior to taking any enforcement action.”).

<sup>332</sup> *Id*.

It makes sense that Twitter would remove this content. However, the process and its result is also more passive. The first consequence is having the tweet removed, which removes an explanation of why the tweet was removed and can limit the discussion from a larger audience. Twitter currently does not distinguish a post that might be taken down for copyright reasons from another that was taken down for violating the hate speech policy. Moreover, the post being removed can send a signal to the violator that their speech is not tolerated by the platform, but it is the platform that is suppressing the speech – not a larger group. Group condemnation sends a stronger message because then multiple eyes have seen the post and deemed it as hate speech. Reporting is a silent method that is more centralized because one entity, Twitter, is making the final decision.

Moreover, Twitter users are the ones that engage in reporting threats of violence and glorification of violence.<sup>333</sup> Anyone can report potential violations of this policy, whether they have a Twitter account or not.<sup>334</sup> This puts the responsibility on the users to report instances that they feel like violate the rules. It may be the case that Black users and users from other marginalized communities prefer to attack the comment head on instead of using the in-app reporting system that has been perceived to be inefficient and applied unevenly by users across the spectrum.<sup>335</sup> Moreover data shows that implicit bias by algorithms used on social media

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<sup>333</sup> Help Center, Glorification of Violence Policy, *supra* note 290.

<sup>334</sup> *Id.*

<sup>335</sup> Conservatives commonly accuse the major social media companies of censoring the political right. Paul M. Barrett and Grant Sims, FALSE ACCUSATION: THE UNFOUNDED CLAIM THAT SOCIAL MEDIA COMPANIES CENSOR CONSERVATIVES, New York University Stern Center of Business and Human Rights, (Feb. 2021). <https://static1.squarespace.com/static/5b6df958f8370af3217d4178/t/60187b5f45762e708708c8e9/1612217185240/NYU+False+Accusation+2.pdf> (“In response to Twitter’s decision on January 8, 2021, to exclude him from the platform, then-President Donald Trump accused the company of ‘banning free speech’ in coordination with ‘the Democrats and Radical Left.’”).

platforms may impact tweets using African American Vernacular English (AAVE).<sup>336</sup> Lastly, some groups may be more likely to use the reporting system over other groups. Black users may not engage in this self-reporting system as much as other users because of a long history of distrust in using these systems.<sup>337</sup> If Black and historically marginalized groups are opting out of using these internal reporting systems then it could be an indicator that these groups believe that the platform is doing an inefficient job of regulating hate speech on the platform.

To sum up, Twitter encourages group condemnation by allowing users to use hashtags which unite and mobilize groups on the platform. Secondly retweets and likes show approval and support of a tweet. The more like and tweets a message receives the more the outward approval that message seems to receive. Lastly users are also able to organize themselves ill-defined spaces on the application by following people who self-identify to certain communities. This helps these groups condemn hate speech.

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<sup>336</sup> Tweets using AAVE were twice as likely to be labelled offensive compared to other tweets without AAVE. Maarten Sap et, al., The Risk of Racial Bias in Hate Speech Detection, Association for Computational Linguistics, 1668, 72, (Spring 2019) <https://www.aclweb.org/anthology/P19-1163.pdf>.

<sup>337</sup> There is limited research on reporting tweets by demographics on Twitter, however a small study of 314 tweets reported to contain harassment found that over half of the tweets were reported by someone other than the targeted person. WAM! Harassment Reports, Nov. 6-26, 3, (2014). Even though data on social media reporting is limited there is a long history of people of color and particularly Black people declining to rely on internal systems or centralized systems to act when they have been harmed in several different contexts. Women of Color may be disinclined to use internal grievance structures that they may view as inherently biased to report instances of sexual harassment in the workplace. Tanya K. Hernandez, *A Critical Race Feminism Empirical Research Project*, 39 U.C. Davis L. Rev. 1258, 61 (2005-2006) [https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1020&context=faculty\\_scholarship](https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1020&context=faculty_scholarship). Studies show a correlation between media attention to police brutality and a decrease in likelihood to report violent crime especially in predominantly Black communities. Matthew Desmond, Andrew V. Papachristos, and David S. Kirk, Police Violence and Citizen Crime Reporting in the Black Community, *American Sociological Review*, Vol. 81(5) 857, 70, (2016) [https://scholar.harvard.edu/files/mdesmond/files/american\\_sociological\\_review-2016-desmond-857-76.pdf](https://scholar.harvard.edu/files/mdesmond/files/american_sociological_review-2016-desmond-857-76.pdf). The mistrust of medical institutions amongst the Black community has influenced a negative perception of the safety of the Covid 19 vaccine as well. Laura M Bogart et al., COVID-19 Related Medical Mistrust, Health Impacts, and Potential Vaccine Hesitancy Among Black Americans Living With HIV. *Journal of acquired immune deficiency syndromes* vol. 86,2 (2021): 200, 3, doi:10.1097/QAI.0000000000002570.

However, the hate speech policy hinders group condemnation because the punishment is from the platform, a centralized entity, and the consequence removes the tweet from view from so that others could publicly condemn it as a group. The consequence also does not sufficiently explain why the message is being remove – only that it violated the platform policy. Moreover – some marginalized communities may be less likely to use these reporting systems because of the distrust amongst internal reporting systems and a preference to address the hate speech in another way.

### **Economic sanctions**

The first part of this section will discuss how the application’s architecture allows for economic sanctions of hate speech on the application. The second portion will explain how the application dissuades economic sanctions of hate speech.

The first way that Twitter’s architecture allows for economic sanctions is by allowing users to tag other users in separate posts. When a post becomes flagged by a group as being hate speech, the group can notify an employer or business entity if they have a Twitter account. Most national brands have a Twitter account on the application. So, if a user works for one of those national brands other users can notify the brand by tagging them. Since tweets that contain hate speech can become extremely viral, this increases the pressure these brands feel to fire the person or impose some other penalty for their speech. Most business pages are public, meaning that any person can message them privately or publicly on the application. Most business pages have links to their website or other public contact information in their page bios. This increases the avenues for users engaging in cancel culture to call for the accused user to be fired or penalized.



Secondly the public nature of the application and the internet itself makes this information easier to find. As stated in the public condemnation section, most users are public meaning anyone can view their tweets, bio, and other information on the page even if they are not following the person. Some users elect to state where they work in their bio, but even if they do not state directly in their bio, this information can be deduced by a combination of tweets, photos, or videos, and from other followers that personally know the accused user. Users engaged in cancel culture will often reply to the message with hate speech asking for where the person is employed or where they go to school. There is often a collective effort to find personal information as seen in the Mimi Groves case study.

Once the information is located it is widely broadcast by tweeting and retweeting the information to the public. How Twitter regulates this will be discussed in more detail below. The employer or school's email address and phone number could be broadcast within tweets with thousands of impressions. This allows for Twitter users to act. Calling the employer or school can lead to tangible consequences for the offender. As in the Mimi Groves case study, one could lose their job or scholarship. This collective effort of calls and tweets is usually what allows for the pressure behind a company's decision to suspend a student.

However, economic sanctions are slightly hindered by Twitter's terms of use. The guidelines specifically prohibit users from divulging personal information on Twitter. "You may not publish or post other people's private information without their express authorization and permission. We also prohibit threatening to expose private information or incentivizing others to

do so.”<sup>338</sup> They also say that posting this information can cause “financial hardship.”<sup>339</sup>

However, if phone numbers or emails have been shared publicly elsewhere on the page, they may not consider that information private. Twitter does not consider full names or places of employment or education to be personal information in violation of the policy.<sup>340</sup> This is helpful to economic sanctions because this is usually all the information that is necessary to request that someone be fired from a job or face consequences from their school. There is an in-app reporting system for violation of this policy but once the information is out there it can be hard to contain because it can be easily reposted and publicized.

Economic sanctions are largely assisted by the application. First this is in part because of the public nature of the application. Because the information needed to create economic sanctions such as name, place of employment, and location can be found in a user’s bio on application this information is easily accessible. Second users can tag business or schools in their message and since many large corporations, universities, and high schools have a public Twitter accounts tagging them is easy. Third the application tools such as retweeting, liking, and replying assist in making a tweet viral. The pressure from viral tweets can cause the business and organization to act. Lastly, although the application does warn that posting information can cause financial hardship, Twitter’s own terms of service pushes back on the idea that activities like the ones done by cancel culture are always in violation of their terms of use. Phone numbers or emails can be considered public if they have been shared publicly elsewhere on the page.

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<sup>338</sup> Twitter, Twitter Private Information Policy, <https://help.twitter.com/en/rules-and-policies/personal-information>.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

Moreover, Twitter does not consider full names, places of employment, education to be personal information in violation of the policy.

## Discussion

The purpose of this section is to discuss the findings in relation to the question: does Twitter as a platform help address the power imbalance of counterspeech by minorities and lack of agency and credibility as minority speakers? Recall that researchers have stated that some minority groups experience “diminished access to private remedies such as effective counterspeech.”<sup>341</sup> Hate speech also may have a “silencing effect” on its victims, disabling and discrediting “a would-be speaker” and thereby reducing the effectiveness of counterspeech.<sup>342</sup>

First, the architecture and culture of the application increase the likelihood that the message will be public because most people prefer to have their account public. Second hashtags, likes, and retweets help increase publicity by allowing messages reach a broader audience. Lastly embedded content also allows for other content to be shared from other platforms on Twitter. The original tools of the application seem to have a similar purpose – to allow users to reach a bigger audience and publicly share information. The application makes this purpose easy to access because anyone with a mobile phone or laptop, email, and Wi-Fi can use the application.

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<sup>341</sup> See Mari J. Matsuda et al., *Words That Wound: Critical Race Theory, Assaultive Speech, And The First Amendment*, 48, 1<sup>st</sup> edition, (1993). Catharine A. MacKinnon, the feminist legal scholar, suggests that the same problem observed by critical race theorists—limited access to the means of communication—plagues those who would use counter speech to criticize individuals in power. Catharine A. Mackinnon, *Only Words*, 77, HARV. UNIV. PRESS (1996).

<sup>342</sup> Owen M. Fiss, *The Irony Of Free Speech*, 25, HARV. UNIV. PRESS (1996).

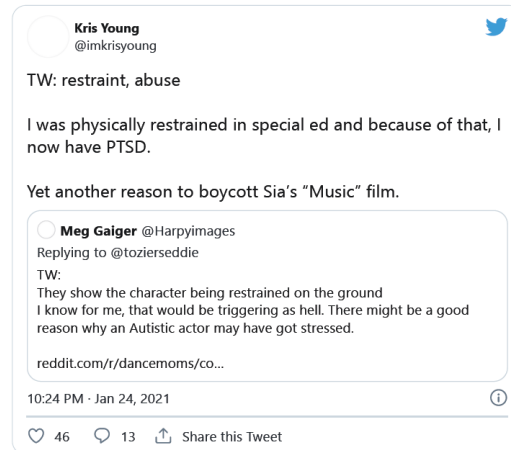
These characteristics help marginalized groups share because the barrier of entry is lower than other traditional mediums such as television or print. Even though the barrier to entry to the public sphere is lower than when Jerome Baron was writing about access to the press as a First Amendment right, the technology is still prohibitive for some groups. Groups that cannot easily use phones or computers will have limited access to speak about issues that are affecting them. Similarly, internet access and technology are limited by who can afford to pay for the phones, computers, and internet access.

Moreover, the new muting tool that allows words, phrases, and conversations to be removed from some user's view may hinder the reach of marginalized groups to other audiences. Especially when examining which words are commonly muted and the stated purpose by some that use the tool to minimize "outrage." Twitter allows users to select these words which may help the users mental health and improve the experience on the application. It also might create comfort zones where people avoid seeing people be challenged for their hate speech. There is a tendency to avoid uncomfortable conversations that may challenge our adherence to systems that benefit us.<sup>343</sup>

Consider how other users balance unpleasant conversations by labeling a tweet with a trigger warning while continuing to condemn the speech publicly.

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<sup>343</sup> In her book *White Fragility* Robin DiAngelo discusses how white people often distort the danger they face by confronting conversations about race and racism. Robin DiAngelo, *White Fragility: Why it is so hard for white people to talk about race?*, Beacon Press, 110 (2018).



This method respects the audience's choice to scroll past it while still enabling that user to convey their message.

Although Twitter does increase the access for people to see and share messages on the application by a wider audience, it still has tools for people to avoid conversations that may challenge and regulate hate speech.

Second, Twitter users have found ways to engage in group condemnation by using the application. Users have mobilized themselves using hashtags and by following other members of their self-identified community. While, Twitter has not assigned these groups, users are choosing and self-selecting by using the application. Furthermore, the retweets and likes are a public showing that is almost like a visual representation of the competition of an idea in the marketplace. The findings demonstrate how being ratioed can convey the "winner" or "losers" of an opinion.

However, Twitter may be hindering the agency of marginalized groups to regulate hate speech by removing content that violates that hate speech policy. Platforms may step in and do some content moderation, but it may be more advantageous and democratic to allow cancel

culture and these communities to moderate the content themselves. It does not minimize the hard work it takes by these group to educate others and challenge hate speech, but minorities and members of marginalized groups can determine for themselves what is hate speech and act accordingly. Allies of these communities can also amplify these voices by engaging in activities that show support – retweeting, tagging, liking messages, and tagging others. Twitter might better assist these communities by allowing a choice to view or condemn the message and by labeling it as hate speech while linking to resource explaining why.

Finally, economic sanctions are largely assisted by the application. The public nature of the application that allows for personal information to be shared like a full name and place of employment coupled with the fact that the platform does not consider sharing these on the platform to be in violation of their terms of service makes economic sanctions possible on the platform. The policy allows uses to mobilize and engage under calls like “*Black Twitter do your thing.*” This call is for Black Twitter users to find information on a person suspected of offensive actions or speech so that the users can impose sanction such as having the person fired. By categorizing this information as public Twitter has almost encouraged economic sanctions by users.

## CHAPTER EIGHT

### Conclusion

The purpose of this chapter is to summarize the overall findings of this thesis and suggest more avenues for research. The purpose of this thesis was to explore how cancel culture operated as counterspeech to regulate hate speech and serve the marketplace of ideas. To answer that question, three case studies were examined where cancel culture was used to regulate hate speech. The effectiveness of cancel culture was measured using three steps from confrontation theory from Critical Race Theory: public condemnation, group condemnation, and economic sanctions. Twitter's architecture, culture, and policies were also examined for how well they assisted users in public condemnation, group condemnation, and economic sanctions.

This thesis used a Critical Race Theory (CRT) approach to examine these issues. CRT supports suppression in a hate speech context where pure marketplace theory supports the expression of all ideas – even harmful ones. CRT also recognizes the flaws with MOIs theory because the marketplace has unequal access and unequal credibility of the speakers. The analysis suggests six primary conclusions:

1. *Cancel culture is an example of counterspeech that uses public condemnation, group condemnation and economic sanctions to regulate various forms of hate speech online.*

First, public condemnation, on sites like Twitter, challenges hate speech by being critical of it. The marketplace is benefited by hearing and reading the critical opinions of marginalized groups. By sometimes using trigger warnings, these groups also found a way to be empathetic to readers while also being critical of hate speech. Cancel culture as counterspeech was not just about being heard, as some may believe, but also about considering the reaction of other marginalized groups to their counterspeech.

Second group condemnation demonstrated how cancel culture on Twitter can help marginalized groups come together and mobilize against counterspeech. This helps groups increase their voices within the marketplace in a space that may be unlike the world outside of the internet. For example, when Galligan opposed other students at the school from saying the n-word in classes, he may have been the only one or one of few Black students who could relate. Once he posted the message on the internet, he joined a larger pool of members in his community who could support him and condemn the speech.

The economic sanctions portion of cancel culture as counterspeech largely revealed a commitment to boycott speech. Users called for boycotts and shared links to petitions for a boycott. However, the response to calls for economic sanctions or realized economic sanctions can demonstrate an adherence to the status quo. A major takeaway from this thesis is that an important measure of whether cancel culture is effective at regulating hate speech should not automatically come down to the result – whether the offending party suffered economic loss.

2. *Cancel culture sometimes uses hate speech to condemn hate speech, which is not beneficial to the marketplace.*



Unfortunately, the study exposed the aspect of cancel culture that is not positive. When members of protected classes are being canceled for their hate speech the counterspeech may target them using hate speech. It is an issue that needs to be examined in more detail - how marginalized speakers can experience more damaging responses to their hate speech than other speakers.

3. *Twitter largely assists cancel culture by its public culture and policies that allow economic sanctions to occur.*

The public nature of Twitter allows for public condemnation but also for economic sanctions to occur because personal information can be easy to find. Even Twitter's own policies assist with economic sanctions because most of the information needed -- like full name, place of employment or school -- is not considered personal information in violation of the terms of use on the application.

4. *Twitter also allows marginalized groups to have more agency when participating in speech on the application because of its low barrier to entry and architecture that makes it easier for marginalized groups to mobilize on the application by following and interacting with each other.*

Users themselves are mobilizing to condemn hate speech as a group. It is not that Twitter encourages group condemnation but are following each other on the application and using some of the tools on the app to assist in group condemnation and economic sanctions.

5. *Twitter dissuades marginalized groups from having agency on the application through internal content moderation tools that can potentially limit the view of tweets that condemn hate speech and policies that remove messages containing hate speech.*

Twitter's architecture, culture, and policies were also examined for how well they assisted users in public condemnation, group condemnation, and economic sanctions. The examination revealed a tension between internal content moderation and user-based content moderation. Some internal tools such as liking, retweeting, and commenting assisted in public condemnation, group condemnation, and economic sanctions. Other tools such as muting and internal reporting reduced public condemnation and groups condemnation by potentially limiting cancel culture on the application. Interestingly the silencing or suppression of speech may occur most often by Twitter's platform capabilities than from users engaging in cancel culture. Twitter can remove tweets for violating their hate speech policy, while users can respond critically to them by condemning the speech through cancel culture.

Moreover, these users may want to respond to the hate speech before it is removed. Users engaging in cancel culture may feel a sense of pride by condemning the speech publicly and receiving support for doing so. It was not too long ago that some marginalized groups were violently punished for speaking out against racism.<sup>344</sup> If the application wants to remove the content, they could try to improve their algorithms ways that identify why the speech is harmful such as using a label like the trigger warnings. They could explain why the speech is harmful to the protected class.

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<sup>344</sup> The Civil Rights Movement is an example of terror and violence used against peaceful protesters demonstrating for civil rights. When students would take bus trips to the south they were often met with violence and beatings were inflicted on the freedom riders when they arrived at Southern bus terminals. Leland Ware, *Civil Rights and the 1960s: A Decade of Unparalleled Progress*, 72:4 Md. L. REV. 1087, 89, (2013). In the 1960s Eugene "Bull" Connor, Birmingham's Commissioner of Public Safety, ordered police officers to use high-pressure water hoses, police dogs, and tear gas to control protesters, many of whom were children. *Id.*, at 1090. Black children that were integrating schools were met with crowds of angry whites gathered on the school grounds shouting threats and racial epithets. *Id.*, at 1089.

6. *The actual competition of the marketplace is an interesting topic that should be examined in more detail.*

When members of a targeted group of hate speech condemns the hate speech, how is that condemnation or counterspeech received by members outside of the targeted group. The willingness or unwillingness for people to listen to or accept the condemnation by a minority group can be representative of a willingness or unwillingness to change the status quo. We should measure how well cancel culture is working by examining how well conversations by minority and marginalized groups are being seen by larger audiences and how those conversations are being received by these groups. The concept of racial realism purports that there is power in words and words are demonstrations of hierarchies in society. Even though cancel culture used the condemnation and the economic sanctions that Delgado and Stefancic imagined would help regulate hate speech online they may be correct that all issues with the status quo cannot be purely solved solely with “discourse.” Some groups still may not be able to effectively use cancel culture as counterspeech because the commitment to the status quo and power hierarchies working against these group is too great.

Cancel culture severs the marketplace of ideas as a form of counterspeech, but it has its own faults that need to be examined more in detail. The findings in this thesis counter the perception of cancel culture as intended solely to silence others. Cancel culture through public condemnation, group condemnation, and economic sanctions challenge the status quo by critiquing hate speech online. Users do this in ways that are critical of the message and at times empathetic to the audience. Cancel culture occurring on an application like Twitter has shown how marginalized users can have more agency and credibility within the marketplace of ideas by engaging in confrontation theory. However, the response to groups using counterspeech can be

an indication of a lack of credibility or agency by some groups to regulate hate speech. And the use of hate speech in cancel culture to respond to hate speech does not serve the marketplace of ideas.

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